

## **Part IV**

### **Participation**



# #WhoseLawIsItAnyway – How Social Media Augments Civil Society Participation in International Law-Making

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**Abstract** Social movements are an important part of a functioning society – also on a global scale. I argue that the internet and social media enable the formation of informal civil society movements and provide the means for such movements to participate in the shaping of international law to an unprecedented extent. In addition to being key to collective action and thus the formation of informal civil society movements in the first place, communication technology enables such movements to (1) bypass nation-state politics, (2) develop normative claims, and (3) change the setting in which international law is made. I outline these mechanisms of engagement theoretically and show them in a case study of the current anti-climate change movement, spearheaded by Fridays for Future, which serves as a case study. The paper closes with suggestions for the empirical study of the mechanisms of engagement.

## I. Introduction

The internet has fundamentally and permanently altered the way in which people engage with each other. At the time of the women's suffrage movement 'America was a mere two weeks away,' making cooperation across the Atlantic possible, albeit tedious from today's perspective.<sup>1</sup> Now, most inhabited places in the world are a mere click away.<sup>2</sup> The internet and the subsequent development of social media platforms determine how most people engage with the world, both with information and with each other. Shared grievances can be known and communicated much more easily, and coordination becomes easier through faster and more widely available communication technology. This aids collective action across countries, leading to social movements that gain relevance beyond their immediate,

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- 1 Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca N.Y.: Cornell University Press 1998), 57.
  - 2 World Bank data indicate that almost half of the world's population uses the internet. See at: <https://data.worldbank.org/indicator/IT.NET.USER.ZS?view=chart>. For visual representations of internet and social media usage, see Max Roser, Hannah Ritchie and Esteban Ortiz-Ospina, 'Internet,' 2015, available at: <https://ourworldindata.org>.

local context. I posit that it leads to a new type of civil society actor, namely *informal civil society movements*.<sup>3</sup>

Understanding how such informal civil society movements engage with international actors, organisations, and international law is important as the relationship between those who govern and the governed strongly affects the legitimacy and effectiveness of governance.<sup>4</sup> Nevertheless, informal civil society movements, representing the demands of the governed vis-a-vis the governing, have largely been overlooked as a constitutive force in the scholarship on international law. As Balakrishnan Rajagopal details,<sup>5</sup> international legal scholars have simply not taken note of or engaged with the copious literature on civil society movements and their relationships to states that exist in other disciplines.<sup>6</sup> This is a missed opportunity for theoretically and empirically examining how the rich variety of actors that shape international law and the environment in which it is made exert their influence.

This gap has become even more relevant with the emergence of informal civil society movements as important actors on the international scene through the advent of widespread internet and social media usage. As a contribution to bridging this gap, I draw on legal research, political science and media studies to outline the mechanisms by which social media and the internet act as a medium for civil society at large to access the international community and collectively demand to be heard on the international stage. This chapter thus sheds light on an undertheorised phenomenon – informal civil society movements' role in shaping interna-

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3 'Informal' as opposed to formally organised civil society organisations, such as non-governmental organisations, for example.

4 Martha Finnemore, 'Dynamics of Global Governance: Building on What We Know,' *International Studies Quarterly* 58 (2014), 221–224 (224).

5 First in a paper, see Balakrishnan Rajagopal, 'International Law and Social Movements: Challenges of Theorizing Resistance,' *Colum. J. Transnat'l L.* 41 (2003), 397–433, and later in his seminal work on the topic: Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge: Cambridge University Press 2003).

6 For an analysis of the reasons for the exclusion of social movements in (constitutional) legal theory and some implications of their inclusion, see Gavin W. Anderson, 'Societal Constitutionalism, Social Movements, and Constitutionalism from Below,' *Ind. J. Global Legal Stud.* 20 (2013), 881–906. For an analysis of civil society engagement and social movement impact on European Union constitutionalism, see Paul Blokker, 'Constitutional Mobilization and Contestation in the Transnational Sphere,' *J. L. & Soc.* 45 (2018), 52–72.

tional law – enabled by communication technology, specifically social media platforms.

While more inclusive international law-making might be a positive development and could aid in bridging the democratic deficit,<sup>7</sup> no systematic analysis or commentary on the normativity of civil society involvement, i.e., whether global decision making ‘should’ be impacted by informal civil society movements, is presented here. The chapter rather aims to describe this undertheorised phenomenon and outline some strategies to test it empirically.

To do so, I first review the concepts of civil society, social movements and introduce informal civil society movements in section I. In section II, I draw on the New Haven School of International Law, as well as concepts and case studies from different disciplines to show how civil society has been incorporated into scholarship. Subsequently, in section III, I develop the mechanisms by which informal civil society movements impact international law-making, namely *bypassing locality*, *creating normativity* and *changing conditions* in which international law is made. In section IV, the current anti-climate change movement, spearheaded by Fridays for Future, will serve as a case study. Section V gives an outlook on possible strategies to empirically test the three mechanisms.

## II. Informal Civil Society Movements

Social movements have always shaped local and national policy-making.<sup>8</sup> Their role in an active civil society is a much studied phenomenon, which has taken on as many meanings and functions as there are disciplines interested in civil society structures.<sup>9</sup> I will use civil society as ‘a marketplace of *interests, ideas and ideologies*’<sup>10</sup> driven by citizens of different political leaning and socio-economic standing, who can coordinate via this market-

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7 Janet K. Levit, ‘Bottom-up International Lawmaking: Reflections on the New Haven School of International Law,’ *Yale J. Int’l L.* 32 (2007), 393-420; Jutta Brunnée and Stephen J. Toope, ‘International Law and Constructivism: Elements of an Interactional Theory of International Law,’ *Colum. J. Transnat’l L.* 39 (2000), 19-74.

8 Margaret E. Keck and Kathryn Sikkink, ‘Transnational Advocacy Networks in International and Regional Politics,’ *International Social Science Journal* 68 (2018), 65-76.

9 Michael Edwards, *Civil society* (3rd edn, Cambridge: Polity Press 2014), 1-17.

10 John D. Clarke, ‘The Globalization of Civil Society’ in: James W. St.G. Walker and Andrew S. Thompson (eds), *The Emergence of Global Civil Society* (Waterloo,

place to find common ground and joint interest. Outcomes of this coordination may range from the founding of a sports club, a neighbourhood food drive, to a social movement, which gathers more widespread support and may transcend its original community.

Non-governmental organisations (NGOs) and non-state actors (NSAs) can develop out of civil society groups and social movements. Some of these actors are formally recognised in international law-making processes,<sup>11</sup> and their influence on national and international law-making is well documented, for example, through the coordinated actions of transnational advocacy networks.<sup>12</sup> This need not be the case, though. Civil society movements can stay decentralised, distributed, identity-driven and leaderless, attributes which characterised the so-called New Social Movements of the 1970s,<sup>13</sup> which formed as the power of the nation-state decreased. Since then, institutional power has shifted from the national upwards to the supranational level and downwards to the regional level, with social movements shifting correspondingly.<sup>14</sup>

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Ont.: The Centre for International Governance Innovation and Wilfrid Laurier University Press 2008), 3-23 (10), original italics.

- 11 See for example the status of NGOs and special interest lobby groups that have observer status according to the United Nations Framework for Climate Change, available at: <https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/information-by-category-of-observer/admitted-ngos>.
- 12 Keck and Sikkink, *Activists beyond Borders* (n. 1); Naghmeh Nasiritousi, Mattias Hjerpe and Björn-Ola Linnér, 'The Roles of Non-State Actors in Climate Change Governance: Understanding Agency through Governance Profiles,' *International Environmental Agreements: Politics, Law and Economics* 16 (2016), 109-126.
- 13 Alberto Melucci, *Nomads of the Present: Social Movements and Individual Needs in Contemporary Society* (Philadelphia: Temple University Press 1989), 58-80; Claus Offe, 'New Social Movements: Challenging the Boundaries of Institutional Politics,' *Social Movements* 52 (1985), 817-868 (830 ff.).
- 14 Della Porta and Tarrow coin this 'Transnational Social Activism,' which co-developed with the shift towards multilevel governance and supranational institutional power. See Donatella Della Porta and Sydney Tarrow, 'Transnational Processes and Social Activism: An Introduction' in: Donatella Della Porta and Sydney Tarrow (eds), *Transnational Processes and Social Activism* (New York: Rowman and Littlefield Publishers, Inc. 2005), 1-17. This development already accounts for quick and simplified communication through the internet and increasingly cheap travel across continents. It does not account for the more readily available character of social media communication which not only changes how people can communicate with each other but also how they can interact with international law and global actors.

With the advent of widespread internet and social media usage,<sup>15</sup> *informal civil society movements* are likewise characterised by a lack of hierarchical structure and a decentralised organisational structure; they mobilise people in different countries or even around the globe; they address international problems, which need not affect participants directly; they go beyond localised grievances, demanding global solutions.<sup>16</sup>

Social media and messaging platforms give large numbers of people the means to mitigate the costs of collective action, and thus enable the formation of informal civil society movements in the first place.<sup>17</sup> Before the inception of these platforms, formal representation and organisation of civil society were especially important because they provided the necessary logistics for coordination, i.e., successful collective action, as well as information exchange and publicity creation. Today that strategy is still very effective, but it is no longer a necessary condition for civil society's

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- 15 Social movements characterised by internet use perhaps started with the widespread action against the WTO summit in Seattle in 1999, where internet-based listservs and websites were used to spread information and mobilise people. See Jeffrey S. Juris, 'Reflections on #Occupy Everywhere: Social Media, Public Space, and Emerging Logics of Aggregation,' *American Ethnologist* 39 (2012), 259-279. Today, the relevant technology ranges from traditional social media platforms like Facebook and Twitter, to messenger apps like WhatsApp and Telegram, to newer platforms such as Instagram and TikTok. Different movements organise via different platforms. The #MeToo movement largely took to Twitter, while in the Tunisian Revolution in 2010/11, Facebook played a significant role. It is crucial to point out that these platforms are not designed for such purposes and that they are not neutral. They follow their own business models and interests, which can be antithetical to a movement's interest and purpose. Additionally, they are not immune to governmental oversight and censorship. For an overview of the complex relationship of social media platforms and social activism, see William L. Youmans and Jillian C. York, 'Social Media and the Activist Toolkit: User Agreements, Corporate Interests, and the Information Infrastructure of Modern Social Movements,' *Journal of Communication* 62 (2012), 315-329. For the strategies of the #MeToo movement as an example for so called hashtag activism, see Ying Xiong, Moonhee Cho and Brandon Boatwright, 'Hashtag Activism and Message Frames among Social Movement Organizations: Semantic Network Analysis and Thematic Analysis of Twitter during the #MeToo Movement,' *Public Relations Review* 45 (2019), 10-23.
- 16 I do not claim that all informal civil society movements are necessarily forces of 'good,' representative of 'progressive' agendas, nor do I claim that their interaction with international actors and potential influence on global governance is necessarily beneficial.
- 17 For a classical text on the analysis of collective action, see Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, Mass.: Harvard University Press 2012).

influence on international law and global governance, as the internet and especially social media have changed the way in which social movements facilitate communication, organise, and raise awareness.<sup>18</sup>

Social media also change the way in which a group's identity is developed and how it is experienced by the individual. Group identity, the production of symbols and cultural claims, are central characteristics of identity-based, networked social movements, as they were first topologised by Alberto Melucci in 1989.<sup>19</sup> Today, such identities are increasingly constructed with social media facilitating the process.<sup>20</sup> Social media, therefore, not only make it cheaper and easier to mobilise people, but they also change the potential dynamics of identity building. By giving all participants of a social movement a voice and opportunity, social media bridges the gap between personal stories and collective narrative and thus facilitates the reproduction of the movement's social capital.<sup>21</sup>

Evidently, social movements in general, and informal civil society movements, in particular, are not synonymous with the corporate actors or even non-governmental organisations that are traditionally objects of scholarly interest. While the former hold agency in the strict sense, the latter do not.<sup>22</sup> Informal civil society movements cannot bring cases before courts as of now, and they cannot enter into strategic partnerships. NGOs might serve as a connector between different local civil society movements, but they need not lead these movements, nor do they constitute them. Hence, their impact on international law and global governance will be different. This makes scholarship on the impact of informal civil society movements on international law and global governance even more important.

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18 Rodrigo Sandoval-Almazan and J. Ramon Gil-Garcia, 'Towards Cyberactivism 2.0: Understanding the Use of Social Media and Other Information Technologies for Political Activism and Social Movements,' *Government Information Quarterly* 31 (2014), 365-378; Youmans and York (n. 15).

19 Melucci (n. 13).

20 Stefania Milan, 'From Social Movements to Cloud Protesting: The Evolution of Collective Identity,' *Information, Communication & Society* 18 (2015), 887-900 (893).

21 For an analysis of the weaknesses of 'networked protests,' especially due to the disconnect between their temporary public signaling power and actual, long term capacities, see Zeynep Tufekci, *Twitter and Tear Gas: The Power and Fragility of Networked Protest* (New Haven, London: Yale University Press 2017). This analysis serves as a reminder that every new wave of social movements faces the same uphill battle, regardless of its technological advancement. Without pluralist forms of organisational structure, the inherent weaknesses in social media-based mass protest overpowers its strengths.

22 Nasiritousi, Hjerpe and Linnér (n. 12).



### III. *Research on Civil Society in International Law and Global Governance*

Conventionally, international law scholarship has only rarely considered the interaction of social movements and international law for a number of reasons. First, movements have traditionally been formed locally or on a national level, while international law is, by definition, international in nature. Second, the solutions to problems in international law are generally seen as coming from the top rather than from below, and third, the actors of international law-making are sovereign states.<sup>23</sup> Lastly, neither international legal texts nor its methods lend themselves to the inclusion of civil society. The sources of legal texts are almost exclusively texts emerging from public institutions; methodologically, international legal scholarship is often focused on the internal logical structure of the law above all else. This leaves no room for political and social contexts and does not contribute to the law's dynamicity.<sup>24</sup>

Nevertheless, social movements that explicitly engage with and utilise international ideals, have 'often foreshadowed and helped bring about major shifts in international [legal] norms,'<sup>25</sup> and there are a number of examples in legal scholarship and concepts that can be drawn on from other disciplines, which can help us think about international law and civil society in general and informal civil society movements in particular.

#### 1. *Law-Making as a Participatory Process*

I adopt an understanding of law-making as means for people to ensure communication with one another, a means to ensure knowledge acquisition and transmission, as well as conscious and deliberate coordination amongst people.<sup>26</sup> This understanding of law-making relies on a constructivist notion of international law and global governance, where – alongside states – non-state actors, ideas and informal norms, organised and disseminated in networks, matter for the process of developing law, implementing it, and determining its consequences.<sup>27</sup> It takes international

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23 Frédéric Mégret, 'Civil Disobedience and International Law: Sketch for a Theoretical Argument,' *Can. Yb. Int'l L.* 46 (2012), 143–192.

24 Rajagopal, *International Law from Below* (n. 5).

25 Mégret (n. 23), 161.

26 Brunnée and Toope (n. 7), 60.

27 For the concept of network of international law applied to the European Union as a case of supranational authority, see Karl-Heinz Ladeur, 'Towards a Legal

law-making as a participatory process of decision or policy-making that requires the ‘incorporation of plural cultural influences into the evolution of legal norms,’<sup>28</sup> because norms, behaviors and practices create it.<sup>29</sup>

Crucially, this does not diminish the importance of the traditional sources of international law as they are defined by Article 38 ICJ Statute.<sup>30</sup> One of the ways that non-state actors, ideas, and informal norms matter is by influencing states’ interests and thereby influencing their explicit declarations of will, i.e., treaty law and indirect displays of custom, i.e., customary law. A constructivist understanding of law-making, therefore, allows the conception of states as complex actors who are subject to norms and whose interests are based on a complex set of considerations and determined by a variety of actors.<sup>31</sup>

It does add another dimension, however, as it gives non-state actors agency in the development and interpretation of both formal and informal international norms, assigning them an active part in the continued creation and maintenance of the international legal system.<sup>32</sup> The mechanisms that are developed in section III speak to both, the influence on state

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Theory of Supranationality – The Viability of the Network Concept,’ *ELJ* 3 (1997), 33–54; Kal Raustiala, ‘The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law,’ *Va. J. Int’l L.* 43 (2002), 1-92.; For a comprehensive overview of a network understanding of international relations, see Anne-Marie Slaughter, *The Chessboard and the Web: Strategies of Connection in a Networked World* (New Haven, London: Yale University Press 2017).

28 Brunnée and Toope (n. 7), 65; Melissa A. Waters, ‘Normativity in the New Schools: Assessing the Legitimacy of International Legal Norms Created by Domestic Courts,’ *Yale J. Int’l L.* 32 (2007), 455–484.

29 Levit (n. 7), 409.

30 As McDougal and Reisman criticised in 1980: ‘In light of the developments of recent decades, the most striking omission from the itemization in Article 38 is, of course, that of reference to the role of international governmental organizations in the creation of both explicitly formulated law and customary expectations, it is increasingly recognized that these organizations, and especially the United Nations, contribute to the creation of international law in many different ways and that any realistic description of transnational prescribing processes must take this contribution into account,’ see Myres S. McDougal and W. Michael Reisman, ‘The Prescribing Function in World Constitutive Process: How International Law is Made,’ *Yale Studies in World Public Order* 6 (1980), 249-284 (266). Today, the factor left out of theorising on international law making are civil society movements.

31 Jeffrey T. Checkel, ‘The Constructivist Turn in International Relations Theory,’ *Wld. Pol.* 50 (1998), 324-248.

32 McDougal and Reisman (n. 30).

actors' interests as well as the active co-creation of international law as the medium of conscious and deliberate coordination between people(s).<sup>33</sup>

Formally, the UN recognises a changing role and general importance of civil society in international and global governance, as evident in the establishment of a panel of eminent persons to review the relationship between the United Nations and civil society.<sup>34</sup> Assessing this role requires an understanding of law-making, where social practice plays a central role. Law-making becomes 'prescription,' namely a 'process of communication which creates, in a target audience, a complex set of expectations.'<sup>35</sup> Through this process, international law at least partially derives from 'the peoples of the world communicate to each other expectations about policy, authority and control, not merely through state or intergovernmental organs, but through reciprocal claims and mutual tolerances in all their interactions.'<sup>36</sup> With the internet and social media, these interactions and communication happen more than ever, so that the process comes to include 'the power of public opinion and civil society.'<sup>37</sup>


## 2. *Civil Society in International Law Scholarship*

Notable examples in legal scholarship on the influence of non-governmental actors, though not necessarily social movements, are the ban on land mines and the development of the international human rights regime.<sup>38</sup>

In the early 1990s, in a concerted effort of six international NGOs, the use of antipersonnel mines was re-coined as the 'Coward's War' and a campaign was launched to attain a total ban on landmines: the Internatio-

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33 Brunnée and Toope (n. 7), 60.

34 Panel of Eminent Persons on United Nations  Civil Society Relations, 'We the peoples: civil society, the United Nations and global governance,' (Geneva, Switzerland: 11 June 2004), 3. Available at: <https://digitallibrary.un.org/record/523950>.

35 McDougal and Reisman (n. 30), 250.

36 *Ibid.* (n. 30), 269.

37 Clarke (n. 10), 5.

38 Other prominent examples include the case of international norms of corruption and the establishment of the International Criminal Court. See Kenneth W. Abbott and Duncan Snidal, 'Values and Interests: International Legalization in the Fight against Corruption,' *JLS* 21 (2002), 141-177, on corruption and Marlies Glasius, *The International Criminal Court* (London: Routledge 2006) on the establishment of the Court. In the interest of space, the two examples are used to illustrate how a variety of civil society actors are conceptualised in international law studies.

nal Campaign to Ban Landmines (ICBL). In 1993, its first international conference was held with 50 representatives of 40 NGOs. By 1995, efforts were distributed between national governments, with Belgium being the first to institute a national law banning landmines, international institutions, which held awareness raising events at the annual Convention on Certain Conventional Weapons in Geneva, as well as the general public through an international media campaign. In 1996, the Ottawa process was launched, and the Mine Ban Treaty was adopted and opened for signature by 1997, becoming law in 1999.<sup>39</sup> The campaign, which was initiated and implemented by NGOs, is an example of formal civil society groups being a central factor in the successful articulation and expansion of international norms. Through a combination of education and public shaming campaigns against producing companies and exporting countries, they were able to re-frame supposed security issues in terms of previously abstract and neglected humanitarian norms, expand the audience beyond state actors, fast-track the codification of a novel international law into international law.<sup>40</sup>

The other central example is the scholarship on the development of international human rights law (IHRL). Tsusui et al.<sup>41</sup> detail how social movements were key to understanding the widespread uptake of international human rights law – by using both established as well as extra-institutional routes. At the UN Conference on International Organisation in San Francisco in 1945, for example, some 1,200 NGOs were present to urge nation-state delegations to include human rights as a central tenet of the United Nations.<sup>42</sup> The impact of civil society groups in the Universal Declaration of Human Rights has been documented in legal scholarship. One example is the successful lobbying of women's NGOs for the inclusion of gender-neutral language in the text of the declaration.<sup>43</sup> The relationship also works in reverse. Once these universal human rights principles were established, they were – and are – successfully used by local and national

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39 See at: [icbl.org](http://www.icbl.org), especially at: <http://www.icbl.org/en-gb/news-and-events/news/2012/20-years-in-the-life-of-a-nobel-peace-prizewinning.aspx>.

40 Lesley Wexler, 'The International Deployment of Shame, Second-Best Responses, and Norm Entrepreneurship: The Campaign to Ban Landmines and the Landmine Ban Treaty,' *Ariz. J. Int'l & Comp. L.* 20 (2003), 561-606.

41 Kiyoteru Tsusui, Claire Whitlinger and Alwyn Lim, 'International Human Rights Law and Social Movements: State's Resistance and Civil Society's Insistence,' *Annual Review of Law and Social Science* 8 (2012), 367-396.

42 *Ibid.*, 370.

43 Arvonne S. Fraser, 'Becoming Human: The Origins and Developments of Women's Human Rights,' *HRQ* 21 (1999), 853-906.

civil society actors to put pressure on national governments by exposing their human rights violations and thus improving people's living conditions.<sup>44</sup>

### 3. *Civil Society in Global Governance Scholarship*

Sociology, political science, and international relations research provide a number of frameworks to understand the involvement of civil society in international law. Institutional sociology has provided comprehensive insights into the development and spread of norms about individual rights, for example.<sup>45</sup> Global governance and international relations scholars further show how the access to norm contestation<sup>46</sup> on a formal international rule or institution is a key feature of a legitimate and just international system. The continued interaction between norm interpretation through different social groups and formal international institutions shapes normative meaning and evolution, especially in circumstances where norm contestation would be enhanced, because fundamental rights are moved outside of the normative framework of the nation-state.<sup>47</sup> Such groups can also act as norm entrepreneurs, actively shaping a normative understanding of behaviors that they find appropriate or desirable.<sup>48</sup>

Oftentimes, such norm contestation and/or creation is most effective if it happens as part of a concerted effort of different actors. In their 1998 seminal work, Keck and Sikkink show how collective actors, which they call transnational advocacy networks, were key to the success of the international human rights regime, international environmental law, and

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44 Beth A. Simmons, *Mobilizing for Rights: International Law in Domestic Politics* (Cambridge, New York: Cambridge University Press 2009).

45 Martha Finnemore, 'Norms, Culture, and World Politics: Insights from Sociology's Institutionalism,' *IO* 50 (1996), 325-347.

46 The concept of norm contestation is central to the study of democratic governance beyond the nation state, where normative meaning is often ambiguous – by design or due to the imprecisions inherent in language. In situations of conflicting or changing meanings of norms, social practices and activities of norm contestation, i.e., who interprets a norm how and in what context, adds to the understanding of norm compliance and normative change. See Antje Wiener, 'Contested Compliance: Interventions on the Normative Structure of World Politics,' *European Journal of International Relations* 10 (2004), 189-234.

47 Antje Wiener, *A Theory of Contestation* (Berlin, Heidelberg: Springer 2014).

48 Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change,' *IO* 52 (1998), 887-917 (896 ff).

women's rights.<sup>49</sup> Generally, the networks' strategies are not merely targeted at influencing policy outcomes, but rather at changing the very terms and nature of the debate. They might take ideas that seem unimaginable at the time of their conception and introduce them into the international debate in ways that make them palpable and imaginable to more classic international actors. At some point, the solutions they suggest to international problems will seem inevitable. A prominent example of a precursor to transnational advocacy networks that used a *strategy of symbolism* is the International Movement for Woman Suffrage.<sup>50</sup> Subsequent women's rights movements have also made use of transnational advocacy networks' ability to leverage *information politics*, i.e., the ability to 'quickly and credibly generate politically usable information and move it to where it will have the most impact,'<sup>51</sup> and to demand *accountability*, holding states to their previously stated principles. Finally, advocacy networks also have the unique ability to employ the 'Boomerang Pattern' that is prevalent in human rights campaigns; for example, transnational advocacy networks bypass a state unwilling or unable to provide rights to its citizens and *leverage* connections to international actors to pressure their state into providing these rights.<sup>52</sup> Alternatively, these connections can be used to mobilise international resources that can be used at the national level in an attempt at what Della Porta and Tarrow call 'externalization.'<sup>53</sup> This research shows that international law and international legal concepts are not made in a vacuum: for example, transnational advocacy networks have successfully managed to reframe the concept of national sovereignty – one of the key tenants of international law – in such a way that allows for their work to fruitfully influence the making of international law.<sup>54</sup>

Thus, global governance and international relations concepts provide the means to study the influence of organised civil society on international law-making. However, the key concepts of the scholarship were developed in the wake of the worldwide onset of internet access and before the development of social media platforms. I argue that the internet and especially social media provide an additional means of civil society engagement with and influence on international law that can be, but need not be, accompanied by transnational advocacy networks.

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49 Keck and Sikkink, *Activists beyond Borders* (n. 1), 10.

50 *Ibid.* (n. 1), 63.

51 *Ibid.* (n. 1), 24.

52 *Ibid.* (n. 1), 20.

53 Della Porta and Tarrow (n. 14).

54 Keck and Sikkink, *Activists beyond Borders* (n. 1), 42 ff.

#### *IV. Mechanisms of Engagement*

In this section, I develop three mechanisms of engagement, enabled by the internet and social media, through which informal civil society movements influence the making of international law and thereby might shape its content: the bypassing of nation-state boundaries, the development of normative claims and the alteration of the setting in which international law is made.

##### *1. Bypassing Locality*

Prior to the internet, communication was often tedious, slow, and most importantly, expensive. Today, most of the world is mere clicks and a bit of bandwidth away. While this brings with it a whole array of problems, such as filter bubbles, crowding out effects and information fatigue,<sup>55</sup> it also means that local grievances can be communicated much more quickly to a much larger audience. A global problem might have global effects, but what is felt much more are the local changes. Without modern, widely accessible communication technology, it would be difficult to properly assess the global dynamics of the problem and the need for global solutions. Realising the commonality of problems across the world has been simplified significantly through the internet and social media – think hashtags<sup>56</sup> – and has given non-elites the chance to voice, compare and aggregate grievances. In the terminology of transnational advocacy networks, civil society now holds the key to information politics at large.<sup>57</sup>

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55 Eli Pariser, *The Filter Bubble: How the New Personalized Web Is Changing What We Read and How We Think* (New York, N.Y.: Penguin Books 2011); Monika Djerf-Pierre, 'The Crowding-Out Effect,' *Journalism Studies* 13 (2012), 499-516; Stephen Hilgartner and Charles L. Bosk, 'The Rise and Fall of Social Problems: A Public Arenas Model,' *American Journal of Sociology* 94 (1988), 53-78.

56 The pound key '#' is used to mark words or word strings as searchable on social media platforms, especially and originally Twitter. Rallying around a cause is facilitated by creating a unique hashtag that accompanies all contributions and comments on that cause. One prominent example is the #MeToo movement. Though first initiated before the use of hashtags, the movement against sexual abuse and harassment gained momentum when the widespread use of the hashtag revealed the magnitude of women's abuse stories and their prevalence across borders, industries, and generations.

57 This appears as the inevitable development when transnational collective action, as outlined by Della Porta and Tarrow in 2005, met the subsequent development

This increased freedom from locality has further effects. It frees people from the boundaries of nation-state politics, and it gives national politicians common ground. While traditional forms of participation within (democratic) nation-states depend very much on where someone is located, i.e., registered and therefore able to vote or demonstrate, the internet, social media and messaging platforms provide a global reach. This reach can bypass the boundaries and constraints of the nation-state and connect civil society directly with international actors, thus lowering the threshold for the participation of civil society movements and the making of international law. In a sense, informal civil society movements are ‘forging *participatory* democracy, by entering directly into the debates that most interest them.’<sup>58</sup> This opens the door for a new addressee of civil society movements: while social movements in the past primarily addressed nation-state politics to right the wrongs they are lamenting, informal civil society movements call on the global community as well; the protests thus become relevant for international organisations and international law. They are reacting to a world where ‘the substance of politics has been globalised [...], the process of politics has not,’<sup>59</sup> being keenly aware that international law and policy have a significant impact on public well-being in all nation-states around the world.<sup>60</sup> In a way, informal civil society movements have the potential to ‘skip’ the state level and directly address the international community, engaging in the co-creation of international law.

The second effect of bypassing locality, on the other hand, changes the interests of states as the formal actors in international law: by bridging nation-states and demonstrating cross-country support for a certain issue, this freedom from locality also gives nation-state representatives common ground on the international stage. It makes it easier for them to navigate and ‘win’ the two-level game<sup>61</sup> of reaching agreements among states that are acceptable to their respective domestic interest groups. As they all

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of social media and mass access to this new technology. For their analysis of transnational collective action, see Della Porta and Tarrow (n. 14).

58 Clarke (n. 10), 4, original italics.

59 Ibid. (n. 10), 3.

60 Rafael Leal-Arcas, ‘Power to the People: From Top-Down to Bottom-Up Approaches’ in: Daniel C. Esty and Susan Biniaz (eds), *Cool Heads in a Warming World: How Trade Policy Can Help Fight Climate Change* (Yale: Yale Center for Environmental Law & Policy 2020), 257-280.

61 Robert D. Putnam, ‘Diplomacy and Domestic Politics: The Logic of Two-Level Games,’ IO 42 (1988), 427-460.



face the same pressure from their constituents and have to validate their decisions against similar claims, it is easier to reach satisfying agreements and thus overcome their own collective action problem.

## 2. *Creating Normativity*

Compliance with international legal norms in the absence of coercion is a central question within international law scholarship.<sup>62</sup> Studies in international relations argue that international norms<sup>63</sup> have similar effects within the international legal system as have been ascribed to domestic norms within nation-states, giving international law avenues of success in the absence of central enforcement mechanisms.<sup>64</sup> Social movements and civil society actors often serve as ‘value actors’<sup>65</sup> and agenda setters,<sup>66</sup> advancing normative claims rather than following interest-driven agendas.<sup>67</sup>

Social media serves as the vehicle for developing and transporting the movement’s normative messages in that it allows a diverse body of ‘global civil society’<sup>68</sup> to jointly move from a (local) grievance-based approach to an issue to the development of a global normative claim. More specifically, informal civil society movements become integral in what Finnemore and Sikkink call the ‘norm emergence’<sup>69</sup> stage of an international norm, i.e., the stage when an international norm – formal, or more likely informal

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62 For a comprehensive overview, see for example Gentiana Imeri, *The Expressive Function of Law: Experimental Studies on the Behavioral Effect of Non-Coercive Law in Social Dilemma Settings* (St. Gallen: University of St. Gallen 2019).

63 Standards of appropriate behavior for an actor with a given identity. These can be informal or codified into law as legal norms, but – crucially – need not be. When such behavioral rules are structured together and interrelated, they might be referred to as ‘institutions’ in the sociological sense; see Finnemore and Sikkink (n. 48), 891.

64 For a discussion of state ‘acculturation’ in the absence of coercive means, see Ryan Goodman and Derek Jinks, ‘How to Influence States: Socialization and International Human Rights Law,’ *Duke Law Journal* 54 (2004), 621-704. For an international relations perspective, see Finnemore and Sikkink (n. 48), 893.

65 Abbott and Snidal (n. 38).

66 Anne Peters, Till Förster and Lucy Koechlin, ‘Towards Non-State Actors as Effective, Legitimate, and Accountable Standard Setters’ in: Anne Peters et al. (eds), *Non-State Actors as Standard Setters* (Cambridge: Cambridge University Press 2009), 492-562.

67 Blokker (n. 6).

68 Clarke (n. 10).

69 Finnemore and Sikkink (n. 48), 893.

– is first formulated. Informal civil society movements thus participate or even drive the symbolism politics of other civil society actors.

Informal civil society movements are also key in the subsequent stage of ‘norm cascading’,<sup>70</sup> where the norm is widely taken up and imitated. In their original framework, a successful norm’s life cycle presupposes specific organisational platforms for the norm emergence stage and states or networks for the subsequent stage of norm cascading. I argue that the widespread use of messaging and social media platforms muddles the delineation between the two stages and eliminates the necessity of concrete organisational platforms and formal networks. This is not to say that formal types of actors and mechanisms no longer exist; I merely claim that they are no longer necessary for a new international norm to form and establish itself, rather they can be (co-)created by informal civil society movements. This broadens the scope of who can act as so-called norm entrepreneurs, i.e., entities which ‘call attention to issues or even ‘create’ issues by using language that names, interprets, and dramatizes them.’<sup>71</sup> The onset of the internet and social media has increased access to information and decentralised information transmission, so that anybody might become a norm entrepreneur, opening up space for informal civil society movements to influence the international agenda directly.

Once a norm is created, there are two ways that these norms can spread. Both impact the interests of state actors: Finnemore and Sikkink<sup>72</sup> show how norm entrepreneurs can persuade states that are more sympathetic to the issue to join the cause, leading to a so-called norm cascade. Studies on the impact of transnational advocacy networks show that many issues are first only slowly adopted by a number of states until a tipping point is reached. Afterwards, the issue is adopted in quick succession by the majority of nations.<sup>73</sup>

Besides active persuasion, norms can also spread by a process which Goodman and Jinks call acculturation, ‘the general process of adopting the beliefs and behavioral patterns of the surrounding culture.’<sup>74</sup> In the process of acculturation, it is not (only) actors’ incentives or convictions that are changed, but their social environment. Accordingly, while ‘persuasion requires acceptance of the validity or legitimacy of a belief, practice, norm-acculturation requires only that an actor perceives that an important

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70 Ibid. (n. 48), 895.

71 Ibid. (n. 48), 897.

72 Ibid. (n. 48), 901.

73 Keck and Sikkink, *Activists beyond Borders* (n. 1), 68.

74 Goodman and Jinks (n. 64), 638.

reference group harbours the belief, engages in the practice, or subscribes to the norm.<sup>75</sup> Such a change in the environment also changes actors' incentive structures, as they now have a certain (self-)identity to take into account when making decisions.<sup>76</sup>

With evidence mounting that states do respond to cultural forces,<sup>77</sup> civil society movements, in creating new normative claims in the contested sphere of norms, can impact international law-making. The mechanism operates both by creating the space for informal civil society movements to directly engage with and co-create (informal) international norms, as well as allowing them to pressure states into considering these norms, which in turn alters their interests.

### *3. Changing Conditions*

Third and finally, informal civil society movements have an important signalling function. Based on the premise that people have a certain perception of themselves and choose actions such that they correspond to that identity,<sup>78</sup> we can assume that campaigning for a certain set of values will also inform many other aspects of people's life and behavioral choices. In the aggregation of informal civil society movements, this changes the interests of states and non-state actors. Informal civil society movements make their claims known loudly, so that local governments, NGOs and domestic as well as international corporations and also courts can hear.

We know that governments respond to the public regarding policy,<sup>79</sup> and even unelected bodies do respond to public attitudes.<sup>80</sup> Supra- and international courts might co-develop new regimes that determine natio-

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75 *Ibid.* (n. 64), 642 ff.

76 George A. Akerlof and Rachel E. Kranton, 'Economics and Identity,' *Quarterly Journal of Economics* 115 (2000), 715-753.

77 For an overview, see Goodman and Jinks (n. 64), 654.

78 Akerlof and Kranton (n. 76).

79 Christopher J. Williams and Shaun Bevan, 'The Effect of Public Attitudes Toward the European Union on European Commission Policy Activity,' *European Union Politics* 20 (2019), 608-628 (613).

80 *Ibid.*, 616.

nal policy-making,<sup>81</sup> and they might make decisions against governmental interests given a supportive public opinion in leading member states.<sup>82</sup>

Similarly, businesses have incentives to adjust their production practices to appeal to popular demand. The effect here is two-fold, however. More significant than the adjustment of their own business practices, which can easily result in base-less virtue signalling, they also have incentives to lobby for stricter standards to make their changes in business practices more believable and to level the international playing field. We know that ‘pressure on multinational corporations, much of it is originating in civil society groups, can reshape business practices.’<sup>83</sup> Thus, as consumers pay more attention due to information available via social media and because of informal civil society movements, this can trigger a business-led move towards stricter business practices.

People who find themselves part of an informal civil society movement proclaiming certain values might also be more likely to also support formal organisations that work towards goals that coincide with those values. If so, then NGOs working on the same topic, perhaps while being part of a strategically equipped transnational advocacy network, will experience an increase in funding and membership. The tacit endorsement from a larger audience might also propel them into new alliances, for example, with local governments and decision-makers, which can scale up their actions.

To summarize, I propose that the internet and especially social media facilitate the formation of informal civil society movements, which go beyond localised grievances, demanding global solutions from international actors beyond nation-states. I posit three channels through which these informal civil society movements impact international law-making: bypassing locality, creating normativity, and changing conditions in which international law is made. In the following section, I will use Fridays for Future as a case study to illustrate the shape of an informal civil society movement and the three mechanisms of influence.

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81 Rachel A. Cichowski, *The European Court and Civil Society: Litigation, Mobilization and Governance* (Cambridge: Cambridge University Press 2007).

82 Michael F. Harsch and Vladislav Maksimov, ‘International Courts and Public Opinion: Explaining the CJEU’s Role in Protecting Terror Suspects’ Rights,’ *J. Common Mkt. Stud.* 57 (2019), 1091-1110.

83 Finnemore, ‘Dynamics’ (n. 4), 224.

## V. *Fridays for Future and Climate Change*

I offer the case study of Fridays for Future, a global anti-climate change movement, to illustrate the mechanisms that I have outlined above.<sup>84</sup> Fridays for Future, by its own account, began in 2015 when Greta Thunberg, then a 15-year old high school student, and other young activists, sat in front of the Swedish parliament every school day for three weeks, to protest against the lack of action on the climate crisis. They posted what they were doing on Instagram and Twitter; posts that quickly went viral.<sup>85</sup> At the time of writing, there are initiatives in 7,500 cities with more than 13 million participants spread across all continents. Their demands, very succinctly phrased in the Declaration of Lausanne, call for the curbing of global warming to under 1.5 degrees Celsius compared to pre-industrial levels, ensuring climate justice and equity, and listening to the best united climate science available.<sup>86</sup> The first comprehensive study on the demographics and motivations of participants characterises the movement as a new generation of activists with unique tactics and a global scope that appeals to high school students but also marks a historical turn in climate activism. The movement is credited with a level of global attention that no previous youth movement has received thus far.<sup>87</sup>

In their means, such as protests, civil disobedience, strikes – high school students staying away from school on Fridays, employees from work – as well as local and creative interventions, Fridays for Future looks very similar to the social movements of the past. It sports a significant number of young people, for whom Fridays for Future is the first experience with protests, who profess ‘limited commitment to established environmental organisations, with varying interpretations of the importance of lifestyle politics and a hopeful attitude towards the future.’<sup>88</sup> As a network of very locally organised initiatives, and inspiration for spin offs such as Scientists for Future, it might also be reminiscent of the transnational advocacy

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84 Naturally, other case studies would have also been possible and might be looked at in the future. The #MeToo movement as a component of the larger movement for women’s rights in one example, net-neutrality and the movement for internet rights is another.

85 See Fridays for Future, available at: <https://fridaysforfuture.org>.

86 See Fridays for Future, ‘Our Demands,’ available at: <https://fridaysforfuture.org/what-we-do/our-demands/>.

87 Matthias Wahlström et al., ‘Protest for a future: Composition, mobilization and motives of the participants in Fridays For Future climate protests on 15 March, 2019 in 13 European cities,’ available at: <https://osf.io/xcnzh/>.

88 *Ibid.*, 5.

networks that Keck and Sikkink<sup>89</sup> established as a unit of analysis. It is, however, less strategically situated than transnational advocacy networks, and rather uses the brute force of the masses, capturing social and traditional media and thus widespread attention. It is also not a coherent, unified movement with clear structures, representation, and goals, as the case of FFF Germany shows.<sup>90</sup>

Whether intentionally or not, Fridays for Future is establishing a new normative claim and carving out the space for it internationally. Finnemore and Sikkink suggest that 'international norms will be more successful, if they are clear and specific, have been around for a while and make universalistic claims about what is good for all people in all places.'<sup>91</sup> Early stage research analysing the content of several hundred thousand tweets that were posted with a set of related hashtags around on the dates of the first Fridays for Future global school strike, shows the normative framing of climate change by the movement:<sup>92</sup> inaction of governments, as well as industries, who are failing to initiate change and stick to the 1.5-degree goal, are bad to the extent of being criminal. This normative frame does not only focus on the environmental depletion, but rather equates the failure of addressing climate change with the wilful risking of millions of lives.<sup>93</sup> By aligning any greenhouse gas emissions to mass killings and future 'social collapse,'<sup>94</sup> which is the quintessential stand in for 'bad,' inaction and continued greenhouse gas emissions are framed as 'bad.' Hence,

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89 Keck and Sikkink, *Activists beyond Borders* (n. 1).

90 Jens Marquardt, 'Fridays for Future's Disruptive Potential: An Inconvenient Youth Between Moderate and Radical Ideas,' *Frontiers in Communication* 5 (2020), 1–18.

91 Finnemore and Sikkink (n. 48), 908.

92 Viktoria Spaiser, Nicole Nisbett, and Cristina Stefan, 'How dare you? – Normative Challenge posed by Fridays for Future,' SSRN (2021), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3581404](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3581404).

93 According to the World Health Organization, climate change is expected to cause about a quarter million additional deaths per year between 2030 and 2050, available at: <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>. While it is difficult to assess the total number, the Intergovernmental Panel on Climate Change's fifth assessment report also holds it to be very likely that the number of displaced people will be increased both due to changing climate conditions and increased weather events, see Intergovernmental Panel on Climate Change, 'Climate Change 2014: Synthesis Report: Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,' (Geneva, Switzerland: 2014), available at: <https://www.ipcc.ch>.

94 Spaiser, Nisbett, and Stefan (n. 92), 6.

there is a clear and specific ('stay below 1.5 degrees of warming'), widely shared (movement around the world), universalistic claim about what is good for all people in all places (inaction causes climate change, causes people to die; hence it is bad, and action is good).

This normative framing prescribes and prohibits certain behavior of states – inaction, inadequate action, or sabotage being chief among them. Its widespread acceptance could put Conferences of the Parties under the UNFCCC<sup>95</sup> under new normative strain, giving especially smaller and more adversely affected states with little economic bargaining power new moralistic/normative advantages.<sup>96</sup>

Besides the development of a normative framework, the movement also provides what Keck and Sikkink call an 'intentionalist frame.'<sup>97</sup> In a speech to the UN plenary in Katowice in 2019, Greta Thunberg proclaimed: 'You only speak of green eternal economic growth because you are too scared of being unpopular. You only talk about moving forward with the same bad ideas that got us into this mess, even when the only sensible thing to do is pull the emergency brake.'<sup>98</sup> This was widely shortened to '[y]ou are stealing our future,' thus establishing a causal chain. Of course, for climate change itself, causal chains are often extremely complex, but proclamations like the one above give the listener an impression of a short causal chain for the ongoing inaction on climate change mitigation.

It might be in large parts too early to tell which concrete effects this normative development will have on international law and global governance. However, some anecdotal evidence will provide a good transition to looking at some strategies and necessary steps to investigate the claims of this essay empirically. One example is the European Commission and its president, Ursula von der Leyen, who, during the height of the Corona pandemic in Europe, continuously reminded mass media and its consumers that climate change mitigation was very much still of the European

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95 United Nations Framework Convention on Climate Change of 9 May 1992, 1771 UNTS 107.

96 See for example the Alliance of Small Island States (AOSIS), a coalition of 44 small islands and low-lying coastal developing states, available at: <https://www.aosis.org>.

97 Keck and Sikkink, *Activists beyond Borders* (n. 1), 34.

98 Democracy Now, 'You Are Stealing Our Future: Greta Thunberg, 15, Condemns the World's Inaction on Climate Change' (YouTube, 13.12.2018). Video available at: [https://www.youtube.com/watch?v=HzeekxyFOY&ab\\_channel=DemocracyNow%21](https://www.youtube.com/watch?v=HzeekxyFOY&ab_channel=DemocracyNow%21); Transcript available at: [https://www.democracynow.org/2018/12/13/you\\_are\\_stealing\\_our\\_future\\_greta](https://www.democracynow.org/2018/12/13/you_are_stealing_our_future_greta).

Commission's mind.<sup>99</sup> She also invited Fridays for Future initiator and figurehead Greta Thunberg to participate in the weekly meetings of the European Commission, so that she could 'present her opinion on the new environmental law before the commission.'<sup>100</sup> Many of the speeches by Fridays for Future organisers have been directed at international bodies,<sup>101</sup> indicating that the movement prominently addresses its claims towards international actors, not just national governments.

One central tenet of the movement is its insistence on states adhering to the 2015 Paris Agreement,<sup>102</sup> advancing its claims in a rights-based frame. Recent decisions by the Dutch<sup>103</sup> and the Irish Supreme Court<sup>104</sup> show that frame at work and indicate the influence of civil society on the interpretation and implementation of international environmental law. The latter recognised that its ruling is of special importance not only for the NGO, who brought the case before the Court, but also to the general public, and with its ruling opened its doors for rights-based climate litigation.<sup>105</sup> The Dutch case had been advanced on the basis of the human rights to life and well-being of the Dutch people. Similar claims are made in the case of a group of Portuguese children and young adults, which has recently reached the European Court of Human Rights<sup>106</sup> and in the case of a group of young Colombian plaintiffs, in whose favour the Columbi-

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99 See for example, at: [https://twitter.com/eu\\_commission/status/1278947680908165120](https://twitter.com/eu_commission/status/1278947680908165120); or at: [https://ec.europa.eu/commission/presscorner/detail/en/ac\\_20\\_1265](https://ec.europa.eu/commission/presscorner/detail/en/ac_20_1265).

100 Frankfurter Allgemeine Zeitung/AFP, 'Greta Thunberg als Meinungsgeberin' (Frankfurt am Main, 04.03.2020), available at: <https://www.faz.net/aktuell/politik/klimagesetz-greta-thunberg-als-meinungsgeberin-16663125.html>.

101 For a collection of speeches by different public Fridays for Future figures, see at: <https://fridaysforfuture.org/what-we-do/activist-speeches/>.

102 Marquardt (n. 90), 7.

103 Otto Spijkers, 'Pursuing Climate Justice through Public Interest Litigation: the Urgenda Case,' *Völkerrechtsblog*, available at: <https://voelkerrechtsblog.org/de/pursuing-climate-justice-through-public-interest-litigation-the-urgenda-case/>.

104 The Supreme Court of Ireland, *Friends of the Irish Environment CLG and The Government of Ireland*, judgement of 31 July 2020, appeal no. 205/19.

105 Orla Kelleher, 'The Supreme Court of Ireland's decision in *Friends of the Irish Environment v. Government of Ireland* ('Climate Case Ireland'),' *EJIL Talk*, available at: <https://www.ejiltalk.org/the-supreme-court-of-irelands-decision-in-friends-of-the-irish-environment-v-government-of-ireland-climate-case-ireland/>.

106 Paul Clark, Gerry Liston and Ioannis Kalpouzos, 'Climate Change and the European Court of Human Rights: The Portuguese Youth Case,' *EJIL Talk*, available at: <https://www.ejiltalk.org/climate-change-and-the-european-court-of-human-rights-the-portuguese-youth-case/>.



an Supreme Court decided in 2018.<sup>107</sup> The Court not only considered the issue of human rights, intergenerational justice and environmental accountability, but even recognised the Colombian Amazon as a subject of rights.<sup>108</sup> Most recently, a group of young adolescents have opened a case with the 14<sup>th</sup> Federal Court of Sao Paulo accusing the Brazilian government of skirting its responsibilities under the Paris agreement.<sup>109</sup>

## VI. *Empirical Outlook*

I suggest strategies for empirically examining the influence of global civil society on international law. These are by no means comprehensive, but they can serve as a departure point for future research.

While it is undoubtedly difficult to determine ‘the empirical paternity of particular prescriptions’<sup>110</sup> in international law, it is an important step in understanding the making of the law. Process tracing<sup>111</sup> can be the method of choice for determining where specific legal provisions come from and what role (informal) civil society has played in their conception.

Besides this qualitative understanding, the text can also serve as a data source for quantitative insights: As Spaier et al.<sup>112</sup> show, tweets can serve as a basis for extracting normative shifts in the claims that informal civil society movements make. Similarly, sentiment analysis around environmental claims and discourse analysis can show how conversations around certain topics change and are influenced by the social media activities of informal civil society movements. Despite the fact that the movement has quickly grown in support, it is still a relatively new phenomenon, so that not many fully formed studies have been conducted so far. However, works in progress can serve as a good indicator of what

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107 For the court documents on *Future Generations v. Ministry of the Environment and Others*, see at: [https://climate-laws.org/geographies/colombia/litigation\\_case/future-generations-v-ministry-of-the-environment-and-others](https://climate-laws.org/geographies/colombia/litigation_case/future-generations-v-ministry-of-the-environment-and-others).

108 Joana Setzer and Lisa Benjamin, ‘Climate Litigation in the Global South: Constraints and Innovations,’ *Transnational Environmental Law* 9 (2020), 77-101.

109 For the complaint *Six Youths v. Minister of Environment and Others*, see at: [https://climate-laws.org/geographies/brazil/litigation\\_cases/six-youths-v-minister-of-environment-and-others](https://climate-laws.org/geographies/brazil/litigation_cases/six-youths-v-minister-of-environment-and-others).

110 McDougal and Reisman (n. 30), 256.

111 David Collier, ‘Understanding Process Tracing,’ *PS* 44 (2011), 823-830.

112 Spaier, Nisbett, and Stefan (n. 92).

can be done. Brückner et al.<sup>113</sup> have taken Instagram comments replying to Fridays for Future posts to better understand the constitutive factors of the movement. In a preliminary analysis, they find more evidence for group cohesion rather than indications of solidarity in those comments. Studies on movements that were predominantly conceived online and/or have a strong online component have investigated how information is distributed,<sup>114</sup> the co-creation of meanings and their establishment in a public (online) space,<sup>115</sup> which roles exist in social movements online, how those roles communicate,<sup>116</sup> and which roles individual social media platforms play.<sup>117</sup>

Supplementing that, it would also be valuable to understand how global informal civil society movements are perceived from the perspective of decision-makers at the different levels. Expert interviews can shed light on the direct and indirect influence that these movements have. Experimental studies, such as vignette studies<sup>118</sup> like those conducted on the international human rights regime,<sup>119</sup> could further supplement our understanding of how normative framings of climate change matter for people on the streets as well as within the international decision-making structure.

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- 113 Felix Brünker, Fabian Deitelhoff and Milad Mirbabaie, 'Collective Identity Formation on Instagram – Investigating the Social Movement Fridays for Future,' Australasian Conference on Information Systems 2019 (Perth: 2019), available at: <https://arxiv.org/pdf/1912.05123>.
- 114 Yannis Theocharis, 'The Wealth of (Occupation) Networks? Communication Patterns and Information Distribution in a Twitter Protest Network,' *Journal of Information Technology & Politics* 10 (2013), 35-56.
- 115 Xiong, Cho and Boatwright (n. 15).
- 116 Felix Brünker, Magdalena Wischnewski, Milad Mirbabaie and Judith Meiner, 'The Role of Social Media during Social Movements – Observations from the #metoo Debate on Twitter' in: Tung Bui (eds), *Proceedings of the 53rd Hawaii International Conference on System Sciences* (Honolulu: University of Hawaii at Manoa 2020).
- 117 Lydia Manikonda, Ghazaleh Beigi, Huan Liu and Subbarao Kambhampati, 'Twitter for Sparking a Movement, Reddit for Sharing the Moment: #metoo through the Lens of Social Media,' *11th International Conference on Social, Cultural, and Behavioral Modeling, SBP-BRiMS* (Washington: 2018), available at: [https://link.springer.com/chapter/10.1007/978-3-319-93372-6\\_13](https://link.springer.com/chapter/10.1007/978-3-319-93372-6_13).
- 118 Vignette studies use scenarios in order to immerse study participants into certain situation or simulate circumstances, before asking them to make a decision. They often provide more external validity than laboratory studies, while keeping internal validity high.
- 119 Matthew Kim, 'Legalization and Norm Internalization: An Empirical Study of International Human Rights Commitments Eliciting Public Support for Compliance,' *Penn State Journal of Law & International Affairs* 7 (2019).

Finally, informal civil society movements exist in a complex system of international actors, prevalent (international) norms and their contestation. These actors have different sets of possible actions, interests, constraints and normative convictions. In such a setting with heterogeneous actors, which lobby for or against a given resolution in international law and negotiate the provision of a public good, computational methods such as agent-based modelling (ABM) can tease out the dynamics of the international community and how those dynamics determine the successes and failures of international (environmental) law.

Computational social science approaches create the opportunity to observe which parameters determine the emerging patterns as well as the intermediate steps and actions involved in their generation. They are especially useful in understanding interdependencies between the dynamics of different actors that have different behavioral options available to them and act within different spheres of influence. This leads to complex interdependencies in the design and implementation of international law and global governance processes. As Rajagopal summarizes, '[a] social movements approach, [by contrast,] focuses on the actual way political choices are shaped in collective settings, thereby allowing analyses to either 'scale up' from the level of individuals or 'scale down' from the level of states.'<sup>120</sup> Simulations of dynamics thus also provide the opportunity to test how local normative realities might be conceptualised in a co-constitutive relationship to global normative change.<sup>121</sup>

## VII. Conclusion

I posit three mechanisms by which the internet and especially social media enable *informal civil society movements* to impact international law-making either by engaging directly with the international legal sphere or by changing the interest structures of nation-states: (1) *bypassing locality* – traditional forms of participation within the (democratic) nation-state very much depend on where someone is located, i.e., registered and therefore able to vote or demonstrate. Messaging and social media platforms provide a global reach that can bypass traditional boundaries and constraints of the nation-state. Civil society can directly connect to international actors; (2)

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120 Rajagopal (n. 5), 417.

121 Antje Wiener, *Contestation and Constitution of Norms in Global International Relations* (Cambridge: Cambridge University Press 2018), 21.

*creating normativity* – it allows a diverse body of civil society to develop a global normative claim and to carve out the space for this normative claim on the global stage; and (3) *changing conditions* – in the dynamic and complex international law-setting, these movements change the interests of all international actors: businesses start taking into account different incentives to lobby for stricter standards because their consumers pay more attention; governments are more likely to be at the forefront of progressive treaties if that increases their chances of re-election; civil society organisations might see an increase in membership and funds. These mechanisms are illustrated through the global environmental movement, with Fridays for Future as the central initiative.

With its focus on state actors and international organisations, international law scholarship is missing the opportunity to theorise and empirically examine the influence of the rich variety of actors that shape international law and the environment in which it is made. New developments in text analysis, network analysis, as well as tried and tested methods of process tracing and interviews can help in bridging this gap and have been briefly outlined. Collaborations with researchers in political science, sociology or economics can fruitfully pair novel methods for the study of the law and in-depth understanding of the forces that shape international law.