

ZOOM IN

The Question:

Shifting from Article 103 to ‘equivalent protection’. The *Al-Dulimi* case before the European Court of Human Rights

Introduced by Antonello Tancredi

In its recent case law, from *Al-Jedda* to *Al-Dulimi*, the European Court of Human Rights has demonstrated a particular inclination in solving issues of conflict between international obligations arising from different conventional systems (such as the ECHR and the UN) not in terms of hierarchy or supremacy (following, for example, the logic of Article 103 of the Charter of the United Nations), but rather by trying to reconcile apparently conflicting commitments. In this effort to promote harmonisation and reconciliation, the use of interpretative techniques, such as the presumption of conformity or the doctrine of equivalent protection, play a leading role. Does it follow that Article 103 of the Charter of the United Nations is an obsolete tool in resolving conflicts between international treaty-obligations, especially when violations of human rights are at issue? And if so, is a more pluralistic approach to conflicts between international obligations not only desirable, but also more in line with the rule of law? What exactly is the meaning that should be ascribed to the principle or ideal of the rule of law in the international legal order? Can it be simply circumscribed to the principle of international legality or respect for the law? Is compliance with the most powerful rule-making authority all that counts for a rule-of-law argument?

QIL is, and will remain greatly interested in exploring issues and patterns of interrelation between international legal sub-systems. In this zoom-in, we asked a legal theorist and an international legal scholar who have repeatedly investigated and considered these questions in their research, to comment on the Chamber judgment of 26 November 2013 in *Al-Dulimi v Switzerland* (today referred to the Grand Cham-



ber), the second decision of the European Court of Human Rights on targeted sanctions after *Nada v Switzerland*.

