From Promise to Precarity: Rethinking International Law After a Quarter Century

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INTRODUCTION

A quarter-century anniversary offers an opportunity for reflection and reckoning. The twenty-first century's first quarter brought significant shifts to international law, international institutions, and the commitment of dominant states to the international rule of law. This symposium issue of the *Washington University Global Studies Law Review* takes stock of the shift across three domains: international criminal law, international economic law, and global governance. In each of these areas, the post-Cold War ambitions of international law were on the rise at the turn of the century. The World Trade Organization had been established, and its institutionally ambitious dispute-settlement system was beginning to function. The International Criminal Court was on the horizon. Multilateralism appeared inevitable, grounded in the widely shared belief that international law could deepen and stabilize global cooperation, keep the peace, spread democracy, and "lift all boats."

That turn of the century moment of globalist aspiration also brought the founding of the Whitney R. Harris World Law Institute and the *Global Studies Law Review*. The Institute bears the name of Whitney R. Harris, the last surviving member of Justice Robert Jackson's prosecution team at Nuremberg, who lived nearly a century and gave generously to the institution that now carries his name. His gift was an expression of a conviction rooted in an even earlier international legal moment: that law could be made to restrain power and that institutions devoted to international law were worth building and sustaining. The *Global Studies Law Review* was founded in that same spirit.

Twenty-five years on, this symposium issue asks how these earlier aspirations have held up, and what this new moment in international law has to offer. The symposium's theme, "From Promise to Precarity: Rethinking International Law After a Quarter Century," offered the authors an invitation to take stock, looking both backward and ahead. The current moment of retreat from multilateralism, flaunting of rules, erosion of institutions, and contestation over norms carries a sense of loss. Yet loss can give rise to the emergence of something else, and this issue's authors look for patterns and signs of change. Perhaps these changes offer clues about how law matures and develops. Perhaps they offer lessons to carry forward into a new cycle of international collaboration. Perhaps they offer seeds of new ideas and new orders.

I. CONTENTS

The issue offers symposium proceedings and essays that extend its themes. These are organized around the three focal domains: international criminal law, international trade and economic law, and global governance.

The first set of discussions were moderated by Leila Sadat, whose own work on the Crimes Against Humanity Initiative offered important backdrop. The panel, and the record printed here, features Nancy Combs, Valerie Oosterveld, Sharon Weill, and David Crane. These scholars hold significant practical experience in international criminal tribunals and advocacy. Their wide-ranging conversation developed insights on gender sensitivity in international criminal law, the proliferation of domestic war crimes units and universal jurisdiction prosecutions, evidence-gathering, corporate criminal liability, and ways to think about the periodicity of accountability. David Crane develops his theory of accountability "waves" at greater length in his contribution in this issue entitled: "A New Wave of Atrocity Accountability: The Age of Aggression."

The trade and economic law discussion returned repeatedly to the collapse of the WTO Appellate Body, the Trump administration's use of tariffs as a tool of geopolitical extraction, the domestic securitization of trade, and the difficult question of whether multilateralism can be reconstructed—and in what form—after the shocks of the current moment. Lawrence Liu moderated this conversation between Rachel Brewster, Harlan Cohen, Ji Li, and Desiree LeClercq—a group whose combined expertise spans WTO law, U.S.-China economic relations, labor rights, and institutional design. Brewster's essay, "Trade Law in an Era of Geopolitical Rivalry: National Security, the Dilemma for Middle Powers, and the Future of the WTO," maps how geopolitical tensions have reshaped trade law, and envisages potential futures for the WTO. Li's "Artificial Intelligence as an Equalizer? Linguistic Barriers and Inequality in Transnational Legal Practice" explores how AI tools interact with structural linguistic hierarchies in the global legal profession.

The third discussion centered on the growing participation of private actors in international institutions and governance processes and the distinctive infrastructural power of contemporary technology corporations. It engaged in normative stock-taking: are these trends positive indicators of a move toward democratization of global governance, or something more privatized, commercial, and less attuned to human flourishing? The discussion was moderated by this author and featured Susan Block-Lieb, Kristina Daugirdas, and Moritz Schramm. This issue features essays by each. Block-Lieb's "International Commercial Law and Innovation in Global Digital Markets: Pre-History, History, and Post-History" offers a longue durée account of the relationship between international law and the

emergence of digital markets, arguing against the conventional narrative that casts regulation as antagonistic to innovation. Daugirdas' "States as Gatekeepers in Global Governance" provides a corrective to accounts that read the rise of private actors as displacing states, arguing instead that state gatekeeping remains central to how private actors participate in global governance. And Schramm's "Infrastructural Ordering: Satellites, Foundation Models, and the Corporate Remaking of Global Governance" theorizes a new mode of private governance that operates not through norms or standards but through material-computational architectures that structure action at planetary scale.

II. THEMES

This symposium issue covers a remarkable breadth: from the prosecution of sexual violence in armed conflict to the collapse of the WTO Appellate Body, from the governance implications of Starlink's satellite internet to the linguistic hierarchies of transnational legal practice. Nevertheless, several common and interlinked themes emerge from the issue.

Out With the Old. International institutions that seemed robust and durable have come under pressure. In Crane's "fourth wave" of accountability, powerful states openly defy the frameworks of international law and multilateral constraint that earlier generations labored to build. Brewster uses Stephen Walt's concept to describe the Trump administration's trade posture as a turn from rule stability to "predatory hegemony." Economic leverage is deployed to maximize short-term gain at others' expense. Daugirdas observes that the number of autocracies now exceeds the number of democracies for the first time in about a quarter century—a trend with direct consequences for international organizations. While many contributors frame institutional pressure as some form of erosion or backsliding, Combs offers a different take, proposing that some institutions were never quite on the stable footing their proponents imagined: "The excitement and optimism about international criminal law that characterized my early career has been generated and perpetuated by a lot of people like us . . . I am not so sure that governments were ever fully on board with the ICL project."[1]

Looking Elsewhere. In light of that international instability, contributors train attention on different levels of analysis and different actors in global governance. Brewster identifies the rise of "middle powers" as potential architects of new plurilateral arrangements in economic law. Others focus on a domestic turn, such as the role of the domestic political economy in

1 *See Panel Transcript: To the Hague and the Beyond: The Shifting Terrain of International Criminal Justice*, 25 WASH. U. GLOB. STUD. L. REV. 882, 894 (2026).

shaping trade policy (LeClerq, Brewster), the securitization of economic policy more broadly (Cohen), or the routinization of mass crime prosecution within domestic judicial systems (Weill). Daugirdas trains attention on international law's domestic inputs (who shapes national positions) and outputs (how international standards are incorporated into national law). Individuals and groups also come into frame: LeClerq argues for recognizing workers as subjects of trade law, not merely as beneficiaries or casualties of it; and Li attends to the experience of individual practitioners navigating structural hierarchies in the global legal profession. We see through Block-Lieb's analysis that international commercial law has long operated through parallel play between formal international organizations and professional associations, hybrid bodies, and standard-setting entities. Finally, according to Schramm, the state can be sidelined entirely: technology corporations now exercise a purely private form of governance, structuring action through infrastructural control rather than rule-making.

In With the New. One story emerging from the quarter-century reckoning is the idea of technological development and disruption, to uncertain normative ends. Block-Lieb shows how international coordination through soft-law bodies has historically facilitated digital market development, and the conventional narrative that casts regulation as innovation's enemy is empirically contestable. Combs documents the growing reliance on non-testimonial, technologically gathered evidence, such as cell phone videos, social media posts, and satellite imagery. For her, this technologically-mediated expansion of available evidence represents a largely positive development: it narrows factual contestation and improves confidence in judicial findings. For Li, AI may partially democratize the global legal profession by attenuating linguistic barriers, but cultural literacy and professional networks remain sources of irreducible structural advantage. Schramm's view is somewhat darker: the concentration of control over digital infrastructures in the hands of a few corporations represents a novel and alarming form of private governance that existing legal frameworks are not equipped to address.

III. LOOKING FORWARD

What does the symposium collection, taken as a whole, say about how we should reckon with the current moment in international law? First, the collection suggests reason for hope—or, at least, measured optimism about where we are now. Some panelists cast this in terms of natural rhythms. Crane's wave framework seemingly implies rupture—the Age of Aggression is qualitatively different than what came before, and reflects a normative collapse; indeed, Crane casts this as potentially catastrophic—yet his metaphor itself suggests something different. Waves are fleeting, and future waves are always coming.

LeClerq, too, embraces cyclicality, grounding the inevitability of a new cycle in the history of the old: The last period of comparable multilateral disintegration—the 1930s—ultimately produced an elaborate institutional architecture exactly because states discovered that unilateral approaches generated intolerable consequences. Those consequences are now in the wings, waiting to discipline future institutional architects.

Cohen and Brewster leave room for a more hopeful emergence. In Cohen's view, we are witnessing the disintegration of a *particular* post-1945 settlement, but we should expect that a new settlement, differently configured, will eventually emerge. The news might even be better: the postwar settlement's artificial line between economy and security served northern and western states well because their conceptions of security prevailed, but now there is room for something different. Brewster, focusing on the WTO, is pessimistic about the near term, but thinks the crisis has dislodged the assumption that new agreements must be made through the WTO, creating space for plurilateral arrangements.

That emerging something different may include a merging and reconfiguration of previously separate domains of law. The turn-of-the-century international legal architecture seemingly assumed the separability of different governance domains: trade from security, criminal accountability from geopolitics, private commercial activity from public authority. But, as Cohen observes, we may now be witnessing "the final disintegration of any line between economy and security".[2] The collection shows that tariffs are deployed as instruments of geopolitical extraction; international criminal indictments trigger sanctions against prosecutors and judges; corporations control military-critical infrastructures. High-level, multilateral law is losing its claim to autonomy from power.

At the same time, those claims might be shored up by domestic, regional and subnational innovations as well as global governance outside the level of high geopolitics. International criminal law faces a crisis of enforcement against powerful states, but domestic prosecution is flourishing. The WTO's dispute settlement system is paralyzed, but trade continues to be extensively regulated, and new forms of agreement-making are emerging. Private actors have gained significant access to international institutions, but state gatekeeping remains decisive, and the Global South's commitment to sovereignty provides a persistent counterweight to privatization narratives. AI is transforming both evidence in criminal proceedings and the distribution of professional capital in the legal profession, but its effects are domain-specific and structurally conditioned. There is too much here to credit a single master story of decline.

2 *See Panel Transcript: After Doha, After WTO? Rethinking Trade and Economic Law in a Fragmented World*, 25 WASH. U. GLOB. STUD. L. REV. 909, 915 (2026).

The conviction that animated the Harris Institute's founding—that law could be made to restrain power—has been stress-tested over the past quarter century. Crane affirms that "international law has been around for five centuries, and . . . writ large, is not going away."[3] Yet the essays collected here complicate the reassurance. Trade law, criminal accountability, and mechanisms of global coordination persist, but often below the ideal typical of multilateralism: through shifts to domestic courts, plurilateral workarounds, or private infrastructures. The full import of these shifts is still unclear. While the symposium's title frames this as a journey from promise to precarity, the essays resist that linearity. What they do show is that precarity has its own generative possibilities. It offers space for critique, innovation, and a more clear-eyed account of international's past and future.

3 *See Panel Transcript: To the Hague and the Beyond: The Shifting Terrain of International Criminal Justice*, *supra* note 1, at 897.