

# **Panel Transcripts**

TO THE HAGUE AND THE BEYOND: THE SHIFTING TERRAIN OF  
INTERNATIONAL CRIMINAL JUSTICE

AFTER DOHA, AFTER WTO? RETHINKING TRADE AND ECONOMIC LAW IN  
A FRAGMENTED WORLD

**WHO GOVERNS THE GLOBAL COMMONS? TECHNOLOGY, PRIVATE  
POWER, AND THE NEW ARCHITECTURES OF AUTHORITY**

## **Who Governs the Global Commons? Technology, Private Power, and the New Architectures of Authority**

This panel was convened at 2:40 p.m., Friday 6, 2026, by its moderator, Melissa J. Durkee, William Gardiner Hammond Professor of Law at Washington University School of Law and Director of Whitney R. Harris World Law Institute. Prof. Durkee introduced the panelists: Susan Block-Lieb, Moritz Schramm, and Kristina Daugirdas

### **M.J. DURKEE**

This is our last panel of the day, and it's called *Who Governs the Global Commons: Technology, Private Power, and the New Architectures of Authority*. I'm Professor M.J. Durkee, and I have with me a distinguished lineup of panelists.

We have Moritz Schramm here from NYU. He's an adjunct professor and research scholar there, and he teaches and writes on the legal regulation of digital corporations and platform governance. He looks at how private digital actors are exercising regulatory power across borders and how law may or may not be struggling to keep pace with these developments.

Next, we have Susan Block-Lieb, a Professor of Law and the Cooper Family Chair in Urban Legal Issues at Fordham Law School. Her work focuses on international commercial law and the processes through which international legal standards are made, particularly through bodies like the United Nations Commission on International Trade Law (UNCITRAL) and other expert-driven institutions.

Lastly, we have Kristina Daugirdas, the Francis A. Allen Collegiate Professor of Law at the University of Michigan. Her scholarship focuses on the law of international organizations, including questions of authority, legitimacy, and accountability. She has also served in the U.S. State Department's Office of the Legal Advisor.

I want to take a couple of minutes to set the stage and talk about the theme of the panel; then we'll take this panel in a few stages; and then we'll of course leave room for discussion. So please have your questions in mind.

This conference is looking backward and looking forward – looking backward specifically over the last quarter century, and forward to the next. This panel is exploring the rise of private actors – corporate actors especially – and how they have challenged the traditional picture of international organizations. It's exciting to come to this theme at the end of the day because we've seen this issue teased in all the panels so far – that is, private actors coming into international institutions.

First let's think for a moment about an idealized picture of international organizations. Sovereign states are making treaties, coordinating themselves in this contractual format. Sometimes these treaties establish international organizations. The organizations usually have a standing body called the Secretariat, and then those bodies continue to do jobs for the states that constituted them. The functionalist view of international organizations law is that states are delegating some part of their sovereign authority to organizations to carry out what sovereign states themselves cannot do singly, and must coordinate together to do through an organization. We can also think about this through a contract model, with sovereign states contracting to create institutions, or through a democratic theory model where populaces represent themselves at the international level through international organizations.

Twenty-five years ago, at the turn of the twenty-first century, we had this interesting moment where there was a lot of hype around the idea of multilateral cooperation. This produced a surge of new actors trying to coordinate transnationally, engage with international institutions, and have some part in global governance. These included civil society organizations who now, through the wonders of globalization, were able to communicate through fax machines and email, and coordinate across the world and bring their views to international institutions. These actors also included the private sector. After the fall of the Berlin Wall at the end of the Cold War, international organizations started welcoming in the private sector to help accomplish their global agendas. This brought the UN Global Compact, and a lot of enthusiasm at the UN and other institutions for getting the private sector on board with a liberal, globalist agenda.

Consider global health. This period saw both intense campaigns by corporate actors to thwart various agendas of the World Health Organization, and, the same time, private funding of the World Health Organization by major foundations and institutions. This is something Kristina Daugirdas has written about. This era also brought public and private partnerships like the Global Fund to Fight AIDS, Tuberculosis, and Malaria and Gavi, the Vaccine Alliance – both of which have leadership structures with both public and private actors included. All of these facts of contemporary global governance look a little bit different than our classic view of the international organization.

Consider climate change. Corporations are now sponsoring many aspects of climate conferences. High-level working groups include corporate actors. Corporate actors appear on state delegations speaking for their states. Entirely private sector-oriented governance mechanisms emerge as products of these climate conferences, like pledging platforms for the banking industry. There is also plenty of activity in the climate arena that is completely outside these intergovernmental organizations, like the C40 cities initiative.

Other fora like Davos, the World Economic Forum, are attended by heads of states, celebrities, and private philanthropists. A whole variety of other fora around the world are not classic international organizations, but are other places where people are meeting trying to solve problems outside of this public governance model. The Paris Peace Forum is another example.

There are three different ways that we are seeing this expansion of the actors involved in international governance. First, private activity within classic international organizations. Second, public-private partnerships whether informal or within formal organizations. Third, purely private projects that are trying to have an international governance role, such as standard-setting through the Facebook Oversight Committee, and other kinds of private roles.

I know that each person here has been working in a particular area with respect to this expansion of private sector roles. I would like to start by hearing from each of the panelists about what you have seen change in the last twenty-five years. To the extent you have concrete examples in different areas, which would be really interesting too.

How has global governance in the twenty-first century diverged or expanded beyond these classic postwar models?

### **SUSAN BLOCK-LIEB**

I'm going to present the UNCITRAL as a case study, but a case study that I know a lot about.

I've observed its insolvency working group sessions for a period of about twenty years. I would describe this case study as a counterexample to what some of us heard from earlier panels. UNCITRAL is not the World Trade Organization. It is not set up to draft hard international law or to enforce any law. It's also not the sort of soft international organization or chaos model that Professor Cohen was talking about earlier. UNCITRAL is not about short-termism. You see a lot of long-termism within UNCITRAL.

What we see with UNCITRAL is an effort to create soft law through principles of constructionism, through a commitment to the dialogic significance of building law from the ground up, based on developing a consensus on law – but not all law, only commercial law, and specifically that commercial law that would serve as an obstacle to free trade. These principles are very much consistent with the spirit of Grant Gilmore or Karl Llewellyn; they wanted to craft a Uniform Commercial Code with commercial law consistent with commercial practices. UNCITRAL is quite focused on getting out of the way of commercial practices as a goal.

Beginning in about 2000, I observed within UNCITRAL as the delegate from the American Bar Association to the insolvency working group. I quickly learned that UNCITRAL's mission was to craft legal instruments to remove obstacles to trade, which it accomplishes through building

consensus. That's not just a casual practice of theirs; it's pretty much baked into the bylaws. And it wants to achieve this consensus among all of its sixty-plus member states.

Its member states come from all areas of the globe. Its bylaws specify that member state delegations will come from a specific number of countries from specific regions. The idea is to have a sort of staggered universalism so that all of the world is represented, without having 165 people screaming at each other.

Since its emergence in 1968, right from the beginning, UNCITRAL has also allowed non-state organizations (NGOs) to both observe and participate in its proceedings.

State delegates sit in the front of the room. They are chosen pursuant to UNCITRAL's bylaws. Non-state delegates sit in the back. These NGOs can include international lawmaking organizations other than UNCITRAL, including from the Hague Conference on Private International Law, UNIDROIT – which is the International Institute for the Unification of Private International Law. There might also be other intergovernmental organizations included in the non-state delegates that sit in the back of the room, like UNCTAD, the IMF, and the World Bank. There might also be non-state delegations from international professional associations like the American Bar Association, the International Bar Association, sitting in the back of the room since 1968. So did the International Chamber of Commerce. So did the Committee Maritime International. So have other trade associations.

Individuals are never seated in the room as individuals – no multinational corporation or small mom-and-pop company is seated within UNCITRAL, except as a delegate from some organization. No individuals qua individuals: judges, academics, practitioners – they all observe and participate only if part of a state or nonstate delegations. You have to be part of a delegation to sit in the room.

As I noted, we all sit together in the room – it is a meeting that exists somewhere between a legislature and a debating society, with really long coffee breaks in between. And it takes a long time because everything that is said is translated simultaneously in the six United Nations (U.N.) languages.

UNCITRAL is not an orphan organization. It exists under the aegis of the UN. It also works within a complex ecology of other international organizations, but not a permanent established set of such organizations. And it rarely outright partners with anyone. It does a lot of parallel play – the way toddlers work together. Its work overlaps with other organizations, but usually on an ad hoc basis, which will depend on the issue area with whom it works together.

Who are the other international organizations with which UNCITRAL has partnered? In producing the Model Law on Cross-Border Insolvency,

UNCITRAL's insolvency working group worked in tandem – and I mean more like a baton race, a relay race – with the European Union (EU). Funnily, the EU did not sit in the room during these deliberations. Because the EU is not a state, it could not sit in the front of the room with other state delegations. Because they couldn't sit with the state delegations, they did not want a seat in the room. That was true until about 2015, thus, for a very long time, but this situation did change eventually.

In subsequently producing its Legislative Guide on Insolvency Law, UNCITRAL's insolvency working group worked on a cooperative basis with the G22, the IMF, the World Bank, with another UNCITRAL working group – the Working Group on Secured Transactions Law – as well as with several professional associations: the International Bar Association, the American Bar Association, and an entity called INSOL International.

### **MORITZ SCHRAMM**

Thank you so much for having me.

The three things that I think changed most importantly in the last twenty years, perhaps, are, first of all, the general understanding of the role of the state. I'm going to say one or two things about that.

Second, the very profound changes in economic ordering because of tech, and the effects this had in the corporate sector. In the past couple of years, we observed the emergence of certain corporations that, mediated through property rights, control infrastructures that are so profound, that are so entrenched into everyday life, which is really unprecedented. Usually, I'm very hesitant to calling things unprecedented – but some things in the tech sector seem unprecedented today.

Third, we didn't change that much as to some of our core societal values. We still have this idea, as lawyers and as “the West” – or as progressives, liberals or whatever you want to call us – that power ought to be constrained. And therefore, as Professor Durkee said, you have this emergence of new accountability mechanisms that rely on and emulate and seek to reproduce certain ideas that we have known from the 20th century, but in these private settings. I would suggest calling this trend, which is particularly prevalent in but not limited to digital governance: governance by emulation. So, you have new settings, you have new power structures, they are decidedly private, but you still have this idea and this interest in those power structures to be controlled and to live up to certain standards. And therefore, you emulate what you have known in the public context and try to reproduce it in the private context, but step by step.

So first of all, I would like to add a pinch of skepticism to the idea that things change so much. How much things indeed change is actually a question of what our point of comparison is. Because if we say today that the large role of corporations and global governance is new, that's only correct if you compare it to the 20th century. The state had an exceptionally

powerful position in ordering things on the globe between 1918 and 1989, and it kind of receded after that.

But large parts of the project of colonialism were organized through corporations. They were deeply entangled with the state, but it was organized through a corporate form because it was understood to be a certain mode of ordering that works towards certain ends in specific contexts.

So, it is very important to keep that in mind, that there's a lot of continuity in many regards, especially when it comes to the role of corporations.

The century from 1757 to 1858 is known as the age of 'company rule' in India. Immensely powerful roles for corporate actors are therefore not new at all. It might just basically come back to the people who initially invented those systems. In that sense, private governance and private ordering is not new at all. I want to clarify though that I'm not equating one thing to the other here, there are many very important differences between then and now. The point I'm trying to make is corporations govern, and they have been for a long time.

What seems to be indeed new today is the role of certain companies – and I only can think of tech companies, frankly – who have that power. Tech companies differ from large financial institutions in the sense that they have a product which is five, ten, or twenty years old. Some tech companies offer products that are extremely entrenched into economic life, so much that I would suggest we can think of some of these products – social media, foundation models, search engines – as a form of an infrastructure. So much of daily life depends on it, that if you would take it out of the system, so many operations, practices of daily life, of economic life wouldn't function anymore.

And the control over those setups, the control over that infrastructure, is very much concentrated through property rights in the hands of very few corporations, and in fact in the hands of a handful of men. And this again is not entirely new. Feudalism or kind of extreme economic inequality is also something that had existed for a long time but perhaps did not to that degree exist in the 20th century.

In the tech sector, you have very few actors, and they prefer not to coordinate because they can still preserve the first mover advantage. So, it's better to internalize the rulemaking, to make the rules for yourself, and then pair that with the economic model of the platform, which relies on tying a lot of other peoples' economic activity to your infrastructures. This again props up the position of those who control central nodes of the system.

Then very briefly, as to the normative consequence of that: we have seen in the waning Obama era and throughout the late 2010s and maybe the early 2020s this idea – especially in Europe, but also in the United States, and also, for example, very strongly in India – that we seek to reproduce

certain ideas of controlling large, powerful organizations, especially administrative organizations, that we seek to reproduce these models in private governance.

Social media companies, especially Facebook, do that to a degree. The whole idea of content moderation really banks heavily on many, many ideas of administrative justice. And that is definitely something where law – kind of very basic traditional, classic public law principles – reappear, but through completely different means and with a definitely skewed and different meaning. But I think they’re being renegotiated right now.

### KRISTINA DAUGIRDAS

*[Remarks omitted. The author’s views are set forth more fully in “States as Gatekeepers in Global Governance” published supra.]*

### M.J. DURKEE

I want to pivot to a more evaluative mode. The theme of this symposium is “From Promise to Precarity,” and we heard a lot of precarity in the previous two panels, earlier today. I think that things might be a little bit more nuanced on our panel. So let me ask you this:

This influx of corporate actors into the work of international organizations, into hybrid organizations, and into organizations that are private but with a global outlook and perhaps mimicking international organizations – is this a positive development? Is it neutral? Is it a sign of decline? Is it a sign of diminution in public authority, or is it a sign of more democratic participation by more groups? How would you assess this?

### MORITZ SCHRAMM

Even though I’m the tech guy here, I want to reiterate one point about sovereignty and the importance of the state.

There’s very interesting scholarship about discussions in the board of the East India Company because they, at some point, the directors of the East India Company perceived themselves to be a sovereign.<sup>1</sup> Presumably those board meetings were held in London – but once that information made its way to the actual government, the powers of that company were stripped and the charter was changed and it went down.

It is true: there is also a long history of the state asserting itself vis-à-vis whatever comes up, and that ties into the whole introspective dimension of

---

<sup>1</sup> Reading Suggestions: DOREEN LUSTIG, *VEILED POWER: INTERNATIONAL LAW AND THE PRIVATE CORPORATION 1886-1981* (2020); Swati Srivastava, *Corporate Sovereign Awakening and the Making of Modern State Sovereignty: New Archival Evidence From the English East India Company*, 76 *INT’L ORG.* 690 (2022); H. V. BOWEN, *THE BUSINESS OF EMPIRE: THE EAST INDIA COMPANY AND IMPERIAL BRITAIN, 1756–1833* (2005); PHILIP J. STERN, *THE COMPANY-STATE: CORPORATE SOVEREIGNTY AND THE EARLY MODERN FOUNDATION OF THE BRITISH EMPIRE IN INDIA* (2011); RANAJIT GUHA, *ELEMENTARY ASPECTS OF PEASANT INSURGENCY IN COLONIAL INDIA* (1999).

this workshop – is this only decline, or is that perhaps something to hope for?

The general lack of an idea where we're going can be paralyzing but really should be seen by everyone in this room, especially the student, as a big opportunity. Because it also means that new and better models of governance can be thought of. The existing model that achieved amazing things, but also is far from perfect for many reasons, is not on its way out, but will be only partially replaced and complemented by other structures.

What these other structures will be in contestation, and the contestation really very strongly hinges upon the ideas that we bring into the world. Additionally, those ideas inevitably build on what we have known so far – they build on what we've learned; what we were taught in law school; what we read in the newspapers. For example, the governance by emulation idea – they are trying to rebuild courts. Why? Because it's constructed by a generation of lawyers who learned that courts are the change makers. They are.

We are a different generation. Change comes from different places, not only from courts. But that doesn't mean that the principal model of learning from the past and trying to kind of reproduce and build upon existing ideas is forsaken. Most importantly, building on something that Professor Cohen said: there's a collapse in the distinction between political and economic power. It's just power.

The consequence of this has to be, or I think ought to be, that we demand certain powers to behave and to be organized and to be constrained in a certain way. When we look at how to constrain power, we look at the state; the one big powerful thing in the past was the state. So, there's something to learn from the state when we talk about constraining powerful organizations.

In that sense, despite all the bleakness and despite all the despair, I want to reiterate that our current moment of uncertainty is in fact a very big opportunity to really ask and kind of fundamentally question certain understandings of what property means. What does it mean to be a corporation? What's our relationship as individuals, as societies, as global publics? What's our relationship to the planet and to other things – and in that sense it's very exciting.

I will focus on one case study. Here, I want to emphasize how nonstate delegations worked together with state delegations to redress the potentially illegitimate conditional lending that followed the Asian Financial Crisis. States from the Global South, particularly, East Asian states, asserted themselves to complain about the illegitimacy of the policies of conditionality that the IMF and the World Bank followed in successfully quelling the Asian Financial Crisis. UNCITRAL's Legislative Guide on Insolvency Law was meant to do something impossible, and that is to converge substantive insolvency laws around the world, and specifically to

converge around a rescue or reorganization culture in insolvency law as distinct from one that was focused exclusively on liquidation. Why? Because in doing this, UNCITRAL would be ratifying the legislative reform that the IMF and World Bank had pressed. This rescue culture – you would not be incorrect in saying, well, that’s the U.S. law. That’s true, but it is also Canadian, UK and to a limited degree German law, as well.

The Asian financial crisis arose and was quelled in very quick fashion because of conditional loans that the IMF had extended. And they were conditioned on legislative changes, including insolvency law reform. By conditional, I mean, there were legal staff from the World Bank and the IMF sitting aside parliamentary boardrooms in South Korea and Indonesia – these were very much a violation of the sovereign rights of those countries. How could the IMF and World Bank make up for that intrusion?

The G22 got organized explicitly to resolve the legitimacy problem created by this conditional lending. The G22 did not end up restructuring the IMF or the World Bank in any way. Instead, the G22 came up with a lengthy list of recommendations, described as the international financial architecture. Corporate insolvency law reforms were just a small part of these recommendations. On the heels of the G22 report and recommendations, the World Bank announced their intentions to get to work on the financial architecture. But as you might imagine that announcement was somewhat controversial. UNCITRAL instead picked up the baton and ran with it. and several years later its Legislative Guide on Insolvency Law followed.

These origins of the Legislative Guide meant that its recommendations took on both a legitimacy-fixing mentality as well as sort of a crisis-fixing mentality. When the EU faced its own financial crisis following the global financial crisis, they too engaged in insolvency law reform initiatives as a way to fix this later financial crisis. And although the EU never cited G22 or UNCITRAL’s Legislative Guide, the fingerprints of the global financial architecture reform were clear. Among the many things that the EU did in the wake of the Global Financial Crisis was to reform their insolvency laws substantively.

### **M.J. DURKEE**

This last question also probably admits no easy answers, but you have each looked across pretty distinct areas, and I’m curious whether you have things to say about interventions that might *improve* values like accountability, transparency, and democratic legitimacy – these concerns that have arisen with respect to corporate or private actors.

Looking forward, are there things that you would suggest? Either big picture normative values or small-picture institutional design choices that could make improvements?

Susan, I’ll invite you to go first on this one as well.

**SUSAN BLOCK-LIEB**

Yes, thank you. I'll speak to UNCITRAL. Within UNCITRAL, there is a nominal distinction between state and nonstate delegates. Non-state delegates do not vote in UNCITRAL working group proceedings, but they observe and participate in the proceedings and, consequently, have the ability essentially to lobby in the room. But it's an open room, and it's transparent.

There were also meetings that occurred outside the room in which the working groups held their proceedings. In these expert group meetings, where the non-state delegates had less transparent access. I think some state delegates understood this, but not all of them.

At first, there were complaints that there was coordination between the U.S. delegation and various nonstate delegations in the room. But by the end of the day, these objections failed to command consensus. Why? Because expert involvement brought desirable expertise to the table. And because other state delegations learned to coordinate both on their own and in regional blocks. For example, there was an African bloc in negotiations over a revision to a treaty on international transport law. As another example, there grew increasing coordination among European member states that were also members of UNCITRAL. UNCITRAL encouraged the European Union to join delegates in the room in which working group proceedings were held. This meant sitting in the back of the room and getting over this back of the room position.

And a number of UNCITRAL projects – whether it is the insolvency working group or other working groups – have been focused specifically on things that Europe wanted. There were years of negotiations on enforcement of insolvency-related judgments, on applicable law, for example. And these negotiations were difficult because UNCITRAL and the EU hold distinct economic goals. The EU has as its goal the strengthening of a single market within that region, but UNCITRAL has no such goal. As a result, there's some tension in figuring out how to do this, how to blend these distinct economic goals.

**M.J. DURKEE**

I will turn it over to Moritz, and then we will open the floor to some questions.

**MORITZ SCHRAMM**

I'll make it a little bit more abstract but also – in parts – therapeutic.

In a way, one really important thing is that there is not one intervention or institution that's going to save us. In fact, the trust that some magical institution – like a court or whatever, a regulatory agency – is going to solve the problems for us is institutionalized liberalism, which achieved, again, amazing, and impressive things. But models can also achieve their goals and

run out of steam. And then the opposition emerges, and you have to modify, you have to readjust.

I think the one thing to do really is to engage with institutions, but not to simply believe and just delegate to them. Therefore, the overarching project is for the academy – and potentially also for a whole generation of people working on these things – to fundamentally rethink what concepts like public-private, property, cooperation, and all these things mean.

As I already said, how we and the planet relate to these things, and then kind of to learn from the past but also to invent, and not to be burdened and not to be stopped by an institutionalized system that also – and that also has to be said – really entrenched those power dynamics and really makes industry actors vastly more powerful. For example, even though they can't vote in international organizations, industry actors often can sway the votes of the states they are incorporated in. So, they vote basically by proxy of the state. There are many critical things to be said about our existing institutional system.

But again, the opportunity to devise and develop new norms, institutions, and ideas does not have to be entirely daunting. We currently live in a system that is mediated through states - like it's historically contingent, it made sense, and in theory is something that is based on sovereign equality of states and all these things. But this is not and never really was a political reality. But there can be new, complimentary ideas to organize new publics, to organize new coalitions beyond those systems. That's important not to replace the state, but to complement it in power imbalances, in situations of domination that really are global rather than mediated by states.

Fourth, very practically, what – especially in the tech sector – can be done is to concretely work with local actors. For example, OpenAI went through a large restructuring last year, and the one actor that was really improving the corporate governance situation was the California Attorney General. So, you really have to have to also combine thinking big, rethink fundamentally but work locally and act pragmatically.

For my last point. It is really important to self-regulate in our fear when it comes to the change. I am European, so people who took it to the streets towards landlords and kind of overcame serfdom were literally rebelling against a God-given order, and everything we rebel today is nothing compared to challenges people have overcome in the past. So, I think in that sense we really shouldn't be too anxious.

### **M.J. DURKEE**

That's a beautiful note on which to end the formalized part of our discussion. What I hear coming out of this conversation is that in the first two panels we were tracing some grander storylines about the rise and challenge in international criminal accountability and the rise and challenge

of the international free trade system and its dispute resolution arm. We had these grand visions and institutions that are now facing challenges.

What I think is coming through in this panel should be hopeful to the next generation of lawyers sitting in the back, and that is, that alongside these big stories of rise and fall is the everyday work of global governance. This work takes place in a multitude of different kinds of organizations – whether they be purely public, public-private, or born out of private companies completely – and through the many different actors involved in those organizations.

That creates a space for ingenuity, right? A space for having some vision as a lawyer about how these different mechanisms of participation should work, how different groups should be incorporated, how their voices should be heard, and what kinds of global governance institutions we need even on smaller scales to solve our problems.

So, the theme of this panel is diversity, and the space there is for innovation amid the rise and fall of the grander institutions of the post-war and the late twentieth-century orders. We also have a lot of machinery of global governance that's still working every day and a lot of places to engage with that.

I'd love to take some questions.

**Q1:**

About the decreasing democracy and rising autocracy: is there any connection between private actors and companies and corporations wanting more power and being able to not create their own law but change the law to their liking? Is there any way that they will try to influence some nations to become more autocratic because they're more easily controlled?

**Q2:**

I have a somewhat similar question, which is more about the representatives selected at the national level, about the kind of the weightedness of authoritarianism now versus democracy.

To the extent that there is then a lot of private interest, it's just far less transparent and probably a lot more rent-seeking – both either seeking monopolies or otherwise offering the sovereign something that is not transparently offered – what model do you think that's shifting to? For example, there's a lot of talk right now about a neo-royalist model, that this is so much of autocracy is not so much about strong states, about court politics, and about the greater power of private actors in court politics than even in democracies.

I'm just interested in your reflections on that.

**SUSAN BLOCK-LIEB**

I was fascinated to read a couple of weeks ago the extent to which Elon Musk was participating in debates, negotiations, whatever you want to call them – within a tinier, older entity called the International Telegraphic Union (ITU). Surprisingly, Elon Musk did so in two contexts, both of which are fascinating – both involve the ITU, an entity from the 1850s. The ITU has developed over time – they have moved beyond telegraphy to radio to the Internet and space assets – satellites. Hence Musk’s involvement with the ITU in two separate instances.

First, Elon Musk was negotiating within the ITU over some regulations issued by the ITU’s Radio Regulations Board having to do with Starlink’s space assets. The Russian Federation objected to Starlink’s facilitation of Internet access for Ukrainian troops violated RRB regulations, especially in Russian occupied areas of Ukraine. Ukraine, in turn, objected to Russian interference with satellite services providing Internet coverage within Ukraine. Musk was trying – he was going back and forth and back and forth. He spent a long time on these negotiations. And at the end of the day, the conversation devolved into a related objection brought by the Islamic Republic of Iran.

So now there’s a separate objection pending in the ITU – Iran brought a complaint to the ITU that Elon Musk and Starlink were enabling protesters within Iran to transmit video and other feed through the Internet they were accessing, contrary to Iranian law, through Starlink. The allegation was that Starlink was handing out free satellite dishes, knowing these would get inside Iran to the protesters. Because of this access, the protesters could then televise what the protests looked like and how the Iranian police were responding. And Starlink objected to the Iranian position on the basis of sovereignty: we’re a U.S. company governed by U.S. law, not by Iranian law.

Russian and Iran were also asserting sovereignty as the basis for their claims. The U.S. and Norway got involved as well. This shows not one but two authoritarian regimes butting heads with a powerful multinational corporation and doing this inside the ITU.

And in all these things, I felt really quite heartened, frankly, that all of these entities cared about international law, that they cared about international organizations, to the extent of this debate? Autocracies, MNCs and billionaires care enough about IOs to rely on them as a forum for debate.

Why? It’s possible that MNCs and their billionaire owners care about international organizations and international laws because they’ve learned the lessons of how poorly corporatism went for corporations under Mussolini and other autocratic states. I mean, corporatism means a million things, but it never means anything particularly good for the corporation. It means they’re being bossed around by the autocrat, rather than they can boss around the autocrat.

**MORITZ SCHRAMM**

That's a wonderful question but I'd be skeptical of any simple, general, and definitive answer to that. Society, politics, and history are complex – especially when we include the perspectives from the margins – and although the present builds on the past I don't think one term like 'neo-royalist' or the likes can analytically distill what's going on. That will be done and redone by others in hindsight.

As to the question how corporations fare under authoritarianism, the answer appears to be mixed. Corporations appear to like predictability, and autocracies tend to be quite unpredictable. So, in that sense, it's bad.

On the other hand, corporations can make a lot of money in authoritarian contexts – so if you can do business, why not?

The more important question right now is: do democratically governed states actually want to be democratically governed in a liberal sense? Or do they actually also like autocratic parts? Because many big authoritarian changes start with being democratically elected.

So, the interest in quick solutions and strong people that thrive not necessarily only because, it's economically beneficial to some, but because it's politically and culturally very appealing to many, many people because many people perceive the system – in quotation marks – not to be working. And that doesn't seem to be a good answer to that.

And to the court politics, that depends, to a large extent, on the enforcement of anti-corruption laws after the fact. So, yet to be seen.

**KRISTINA DAUGIRDAS**

*[The substance of this response is developed more fully in “States as Gatekeepers in Global Governance” published supra.]*

**MORITZ SCHRAMM**

Just a very tiny point to add. Like this kind of continuing prevalence of liberal models in our thinking about ordering. For example, think about the content moderation space, i.e., Speech regulation by social media companies.

The way that that issue was framed in the 2010s was as a free speech issue, and therefore the remedy was some form of administrative justice, of review, more detailed rules, independent accountability mechanisms, and all these things. It was pushed for and executed according to an overall progressive, liberal, and decidedly legalistic model.

The countermove is equally couched in a different set of – but equally legalistic – ideas . So majoritarianism, viewpoint discrimination, discrimination against different groups – is again couched in these very legal terms. It just comes from a different perspective, or uses different terms.

In that sense that kind of thinking is very sticky. It's very hard to escape. It's reproducing, almost, debates we had in the 1950s and 1960s in a completely different sphere. Unsurprisingly so, because the people having those debates right now are schooled – or were schooled – based on those older examples.

**M.J. DURKEE**

I want to take a moment to thank all the panelists for coming here today from all over the country. This was a really fascinating set of conversations across a diverse range of topics, and you all did a marvelous job of generalizing what you had to say enough so that all of us could engage in the conversation.

I really appreciate that. I really appreciate your time and being here.