

Where ‘Falls the Shadow’: The 2025 ESIL Conference in Berlin and the Disciplinary Ambivalences of ‘Reconstructing International Law’

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Abstract

Reflecting on the theme of reconstructing international law as debated at the annual conference of the European Society of International Law in Berlin in September 2025, this article identifies a sense of liminal ambivalence that pervades the intra-disciplinary narratives of crisis and renewal. It argues that the constellation of reformist proposals and discursive strategies articulated across different conference panels uncovers how the calls for reconstruction do not simply warn against international law’s normative decay but also operate as discursive tools for sustaining its functional relevance. In its engagement with the intrinsic ambivalence of international law’s reconstruction, this contribution also serves as a reminder that the calls for reconstruction are essentially discursive constructs whose contingent production and development reveal much about how selectively the discipline forges its reformist agenda in response to crises.

‘In days of crisis ... special responsibility would seem to rest on the legal profession, and particularly on members of the legal profession who have had experience in international law. For security depends upon the

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maintenance of an effective legal order'.¹ By this self-assured framing, the Carnegie Endowment for International Peace launched its 1944 volume *The International Law of the Future*, an outcome of sustained consultations among a diverse group of North American legal professionals and few (exiled) European jurists attempting to envision solidly founded principles and prospects for the post-war international legal order.² More than eight decades later, with the spectre of global 'permacrisis' looming larger than before,³ the 20th annual conference of the European Society of International Law (ESIL) was convened on the question of 'reconstructing international law'. Once contrasted with 1944, the conference's location in the city of Berlin was perhaps emblematic of an enticing symbolic reversal of sorts, while its main venue – the Freie Universität Berlin's Henry Ford Building, constructed by the Ford Foundation's donation in the early 1950s – served as a symbolic reminiscence of the heyday of the consolidation of post-war 'Pax Americana'.

Yet, for hundreds of participants gathering in Berlin, the question of international law's reconstruction may have been overloaded as much with the symbolic and antiquated overtones of the past as with the turmoil of the present and the uncertainty of the future. Moreover, unlike the 1944 cohort, perhaps few participants could envisage the purpose of a scholarly forum on the reconstruction of international law as one of uncovering clear-cut and pragmatic solutions and proposals to the currently rampant crises. The once-called – and monolithically treated – 'invisible college'⁴ arguably appears, for better or worse, far too 'divisible'⁵ to wager upon definite prescriptions. From the opening session, it became rather visible that the discussions would inevitably orientate towards identifying relevant analytical frames as to what reconstruction essentially entailed. The ways in which different panels – and even speakers within the same panels – diverged, at times starkly, in their choices of frames and points of departure nevertheless attested to the intricacies of this intellectual conundrum.

By its very conceptual malleability, the notion of reconstruction may find home in a constellation of different – yet, at times, correlative – ideas and projects, ranging from revival, restoration and reform to revolution and abolitionism. As remarked by several speakers, this notion could be semantically differentiated from the adjoining concepts in that the former implies a process of

¹ Carnegie Endowment for International Peace, *The International Law of the Future: Postulates, Principles and Proposals* (1944), at 1.

² *Ibid.*

³ European Society of International Law, 'Research Forum on International Law in the Age of Permacrisis' (20–21 March 2025), available at <https://esil-sedi.eu/2025-esil-research-forum-on-international-law-in-the-age-of-permacrisis/>.

⁴ Schachter, 'Invisible College of International Lawyers', 72 *Northwestern University Law Review* (1977) 217.

⁵ A. Roberts, *Is International Law International?* (2017), at 1–18.

'rebuilding' without fully dismantling the original edifice.⁶ Conservative as it might sound at first glance, reconstruction may invite reflection on the discipline's construction of social reality and normalcy, for every reconstructive effort evolves as much from identifying (un)desired changes that have emerged as from recognizing what needs to be preserved. It is at the synthesis of these analytical poles that the ambivalence of reconstruction projects comes to light. The ambivalence, as I enlist the term in my reflection, points to the sense of liminality between the attachment to a cherished *status quo* and a constant infatuation with progressive betterment.⁷ International lawyers, without precluding notable exceptions, are generally rather quick to dismiss grandiose and seismic revolutionary designs. In the interstitial position between revering and defying the *status quo* – where 'falls the shadow'⁸ – ambivalence then breeds a plethora of intellectual techniques that international lawyers employ to salvage their professional turf against the torments of crisis.

In an academic field that has traditionally operated, as Oscar Schachter once observed, 'in the style of ancient classicists',⁹ the periodic waves of scholarly pleas for normative reconstruction and reflection upon the future of international law reveal, perhaps far more tellingly than any formalist doctrinal narrative, the discipline's dispositional undercurrents. In times of uncertainty, ambivalence captures the 'professional anxiety' of international lawyers over sustaining the relevance of their discipline, a point to which the discussions of the conference's concluding roundtable also called attention. As a first-time participant in an ESIL conference, I was captivated by the extent to which this gripping sense of anxiety congealed in differing scales and styles of intellectual commitment, which were not necessarily mutually exclusive but, rather, intersected along various lines. The broad consensus arguably concerned the acute relevance and imminence of change in international law, as it stands now, either through the agency of intra-disciplinary reconstruction projects or as a refracted effect of broader shifts in world order – the latter aspect was also expounded during the opening session.

Throughout the conference, some speakers held onto the functional added value of international law and institutions in a crisis-afflicted global (dis-)order, reflecting the entrenched disciplinary conviction that 'international law, imperfect as it [is], [is] an institution worthy of retention and development'.¹⁰ In a similar fashion, the panel discussions on institutional reconstruction of the

⁶ 'Reconstruction', *Oxford English Dictionary*, accessed 23 December 2025, available at <https://doi.org/10.1093/OED/3103922366>.

⁷ On the discipline's narratives of progress, see T. Skouteris, *The Notion of Progress in International Law Discourse* (2010).

⁸ The quote appears in T.S. Eliot's *The Hollow Men*. T.S. Eliot, *Selected Poems* (2015), at 67–70.

⁹ Schachter, 'New Directions in International Law', 49 *Chicago-Kent Law Review* (1972) 13, at 13.

¹⁰ O.J. Lissitzyn, *International Law Today and Tomorrow* (1965), at 7.

United Nations (UN) navigated through the functional ‘cash value’¹¹ of the UN system as an institutional medium replete as much with deficiencies as with possibilities. The preventive function of the UN in the resolution of impending and future conflicts was mentioned as an example of the latter. The debates aligned around redefining the purpose of reconstruction and identifying common misconceptions regarding the structure and functions of the UN as a total sum of various organs and institutions, some of which may need reform more than others. These arguments were formulated, accordingly, against the blueprint of a value-infused distinction between those reforms that were deemed desired and warranted and those that were uncalled for. Once again, the ambivalence and liminality of reconstruction were striking back.

For a number of other speakers, alongside its institutional and normative trajectories, reconstruction foregrounded the partial readjustment of professional practices and lexicon. It entailed that international lawyers should broaden the scope and audience of their professional work, including through engaging with a wider range of stakeholders and (often less visible) actors and publishing for the (non-academic) public. The latter was particularly the subject of a side debate focusing on ‘How to Make International Law Public’. It may barely come as an overstatement that the academic output of international lawyers has often appeared as the discursive craftsmanship of the “technocrats” of a depoliticised procedural order’, as David Kennedy put it four decades ago.¹² While a panoply of similar calls has infiltrated the disciplinary circles in the recent past, it seems that the times of uncertainty provide further stimulus to reflect on these prescriptive invitations with a reanimated sense of urgency.

This prudent sense of attachment to progressive and incremental reconstruction was counterweighed by some other speakers taking retrospective accounts, arguing that the calls for reconstruction have been rather recurrent themes throughout the history of the discipline. As remarked particularly in the debates of the panels on the histories of reconstruction and the UN’s reconstruction, these alternative frames perhaps aimed less to belittle the intensity and urgency of the need for reform than to question the selectivity with which the discipline’s built-in narratives of crisis often operate. In the process of its historical development, the ‘discipline of crisis’ has rarely been short of episodic abnormalities or crisis-inflected epochs of similar intensity and scale.¹³ Yet not all such occasions were equally diagnosed with discipline-wide pleas for reconstruction. It would be anything but trivial to suggest that impulses and direction of reform are, in this vein, less a given than a discursive construct. The scope and severity of reconstruction’s ambivalence may also be contingent upon the extent to which international lawyers

¹¹ The concept is borrowed from Zarbiyev, ‘The “Cash Value” of the Rules of Treaty Interpretation’, 32 *Leiden Journal of International Law* (2019) 33.

¹² Kennedy, ‘International Legal Education’, 26 *Harvard International Law Journal* (1985) 361, at 369.

¹³ Charlesworth, ‘International Law: A Discipline of Crisis’, 65 *Modern Law Review* (2002) 377.

commit to an intellectual exercise in self-reflexivity on the origins and contingencies of reconstruction.

For the discipline as a whole and particularly for its early career members, the 2025 ESIL conference serves as yet another *expression vivante* of how international lawyers, caught up in a professionally shared sense of ambivalence, test the 'argumentative possibilities' of their discipline's intellectual repertoire.¹⁴ A microcosmic exposé of all the paradoxes of ambivalence and dispositional variants involved in the intra-disciplinary debates on reform and reconstruction, the ESIL 2025 somewhat resembled a 'trading zone' of ideas,¹⁵ particularly at a critical interval when international law's standing as a normative frame of reference in international politics seems to be increasingly compromised. In a profession oscillating between 'waves of critical anxiety and enthusiastic reform',¹⁶ a large scholarly gathering on the (future) paths and modes of disciplinary change in times of cynicism and uncertainty may not offer clear-cut prognostic proposals. Yet the general impression that such a forum generates is beyond the vision of a juridical apocalypse as it reaffirms that the discipline fears crisis and, yet ambivalently, embraces it to renew its diagnostic relevance. How the discipline may possibly absorb and enlist the effects of current crises into its epistemic and normative repertoire could perhaps only be left to the judgement of time.

¹⁴ Kennedy, 'When Renewal Repeats: Thinking against the Box', 32 *New York University Journal of International Law and Politics* (2000) 335, at 408.

¹⁵ The notion adapted from Bod *et al.*, 'The Flow of Cognitive Goods: A Historiographical Framework for the Study of Epistemic Transfer', 110 *Isis* (2019) 483, at 487.

¹⁶ Kennedy, *supra* note 14, at 340.