

The Lives and Times of International Law

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ABSTRACT: What does time mean to international law and its acolytes? In this article, which opens the special focus section on ‘time and international law’, we seek to conceptualise our relationship to time as, on the one hand, an objective, linear narrative that both produces coherence and entrenches hegemony, and on the other, as a subjective, lived experience, in which time distorts and changes because so too do our memories and experience of it. This context is then grafted on to our perception of the interplay between the past, present, and future(s) of international law, revealing critical insights into how the profession and practice has grown and changed and reinvented itself. The article concludes by analysing the temporal structures and discourses envisioned and engaged by the contributions that subsequently make up this special section (ranging from cyclicity, layered structures, and the touchstone character of ‘events’, to spatiotemporality, performativity, and poly-sense). These pieces, it argues, introduce different visions of time’s complex architectures, which are framed as constructs through which certain aspects of international law as a discipline are revealed.

KEYWORDS: International Law and Politics, Concepts of Time, History and Philosophy of Time, Hegemony and Imperialism, Poetry and Fiction

I. Introduction

Time is a concept of boundless depths. Its secrets are unfathomable and its complexities myriad. It is a mystery wrapped in an illusion, presented as enigma. An idea of a thing whose meanings are many and fleeting and contradictory. Efforts to dissect it, define it, and grapple with its implications are rarely cohesive and often visceral. In fiction, time is spoken of in riddles. In J. R. R. Tolkien’s *The Hobbit*, for example, the creature Gollum challenges the titular protagonist to a competition of intellect, asking him to determine what is

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[a] thing all things devours:
 Birds, beasts, trees, flowers;
 Gnaws iron, bites steel;
 Grinds hard stones to meal;
 Slays king, ruins town,
 And beats high mountain down.¹

Adjectives such as ‘elusive’, ‘ethereal’, and ‘ephemeral’ are often used in reflections on the nature of time, with such terms revealing its disinclination to being scientifically studied. Yet, as scholars, deconstruction is ineluctable: time is an analytical feature of the phenomenon of knowledge acquisition – that is, it is highly influential in how we learn and replicate data as a society. We cannot resist looking back at our histories to revel in our successes, investigate stories lost to the tumult and violence of epochs past, uncover reasons for our failures, and to undertake an apology for (or rewrite) our mistakes. Likewise, our instinctual need to reinvent ourselves, to become better as individuals and to improve as a society, are enabled by time. It compels us to look forward because it is human nature to question where we are going, to seek out opportunities and identify points of failure while they can still be prevented. In this sense, time is also a proposition – a plea to urgency, a dire warning of the consequences of revisionism, a prayer for a more hopeful future.

For these and other reasons, time is (and has long been) a popular object of erudite reflection. To the ancient Greek philosopher Heraclitus of Ephesus, for instance, time is described as a roaring river denoting perpetual change: its rushing streams ensuring that no person can step in the same waters twice (nor can the exact experience of standing in them be later replicated because the men and women who do so are themselves in a state of constant transformation).² Plato, by contrast understood time to be a distortion (or image) of the ‘eternal’. He defined it, as von Leyden explains, as ‘an everlasting likeness [...] moving by number, of eternity’.³ In its most spartan form, Plato saw time not as a fourth dimension but as a measure of a transient process of the functional, physical realm (the ‘unchanging’ present), changing or becoming in its aspiration to capture the form of eternity (an ‘immutable, imperceptible, imperishable’ or *timeless* form or ideal type).⁴ In this sense,

¹ ‘[Bilbo’s] tongue seemed to stick in his mouth; he wanted to shout out: “Give me more time! Give me time!” But all that came out with a sudden squeal was: “Time! Time!” Bilbo was saved by pure luck. For that of course was the answer’: John R. R. Tolkien, *The Hobbit, or There and Back Again* (1998, originally published 1937), at 101.

² See, for further discussion, Roger A. Shiner, ‘Wittgenstein and Heraclitus: Two River-Images’, 49(188) *Philosophy* (1974) 191; Geoffrey S. Kirk, ‘Natural Change in Heraclitus’, 60(237) *Mind* (1951) 35.

³ Wolfgang von Leyden, ‘Time, Number, and Eternity in Plato and Aristotle’, 14(54) *The Philosophical Quarterly* (1964) 35, at 35.

⁴ Viktor Ilievski, ‘Eternity and Time in Plato’s *Timaeus*’ 65(1–2) *Živa Antika* (2015) 5, at 6.

time is the subjective context through which we see and make sense of the external or 'objective' reality that the forms inhabit in Plato's realm of the intelligible (a kind of perfect utopia to which we aspire to through the progress of time).⁵

Despite the profound philosophical recognition of the importance of time, it is only in recent years that international law more broadly has developed a serious scholarly interest in the concept. In studying law's temporalities, its implications for the practical, methodological, doctrinal, and theoretical dimensions of the discipline are revealed to be extensive, nuanced, and in need of deeper contemplation. Thus, the German Yearbook of International Law has devoted this focus section to the topic of 'Time and International Law'. As its editors, we have invited a diverse range of scholars to reflect on the temporalities of the international legal order, to tell stories about its meaning to our systems of global governance. We asked them to look backwards, forwards, and immediately around them to uncover the vestigial artifacts of the temporal march on the systems and frameworks constructed to govern our communities and defend our civilisational impulse. In their contributions, seen through the lense of their relationships with time as scholars concerned with matters legal, political, sociological, and philosophical, they consider how time has given meaning and context to international law and its institutions, spanning a chronology that begins in antiquity and continues into 'uchronia's' unlimited potential.

In this article introducing the special section, we aim to shed light on how time – a concept universally experienced – is perceived, both in its multidisciplinary context and as a critical frame of reference for the international legal profession. In this context, Section II. undertakes a brief survey of the efforts undertaken by leading scholars, philosophers, and artists of the 20th century to make sense of time and its societal implications – reflections that have largely emerged on the back of the violent ruptures that shaped this era. Their perspectives reveal certain insights relevant to the theme of 'time and international law', such as its experiential and conceptual varieties and its role in navigating individual and systemic traumas. In Section III., we examine the reasons behind the recent surge of interest in the topic in the legal profession, highlighting important questions that emerge at the juncture of time and international law and focussing in particular on the temporal epistemologies of legal knowledge production. The section highlights how perceptions and interpretations of time have been used sometimes to uphold and sometimes to overcome its deficiencies. In Section IV., we introduce and discuss the topics engaged by the six contributions to this special section, and seek to ascertain their thematic synergies.

⁵ Sarah Broadie, 'I–Sarah Broadie: Plato's Intelligible World?', 78(1) *Aristotelian Society Supplementary Volume* (2004) 65; Alexander Nehamas, 'Plato on the Imperfection of the Sensible World', 12(2) *American Philosophical Quarterly* (1975) 105.

II. Experiential and Conceptual Varieties of Time

While the study of time may occasionally veer towards abstraction, it should not be misconstrued as a strictly intellectual endeavour. Its purposes are manifold and vital, with practical and meaningful societal consequences. Over the years, many great scholars have arrived at this topic in an effort to make sense of the traumas that have shaped their lives and upended their communities. The barbarity of World War II in particular was a catalyst for many great thinkers turning their attention towards the temporal. Considered in this context, it is submitted that engagement with the expression of time in philosophy and literature allows us as international lawyers to become aware of the experiential and conceptual varieties of time.

Take, for instance, French philosopher Simone Weil's *The Need for Roots*,⁶ which was penned in exile in 1943 while the author's motherland was still under German occupation. Weil's manifesto demonstrates the clear connective tissue that exists between humanity and history as systems of political influence. It offers a sharp critique of the societal rot that paved the way for the violent populism at the heart of National Socialism's mid-century rise to power during the Weimar Republic. For Weil, the disease of such populism was borne of a collective disconnectedness engendered by complex environmental conditions, a loss of 'rooted' connection to the intellectual and spiritual life represented by one's past.⁷ As Paul Kingsnorth argues, Weil was thus able to diagnose the rise of Hitler and Stalin as symptoms of their societies adrift, their populations having been 'uprooted [] by the industrial revolution, by Bolshevism, by the Great War, by the depression, by the wider process of modernity'.⁸ Because the past presented a loss of identity, its peoples were compelled to seek 'security, power and meaning' in the 'totalitarian ideology' of their charismatic strongmen.⁹ As such, Weil's temporal enquiry ultimately rests in a belief that the 'health of a political system' is calculated by 'how it determines time as a field of experience and a condition for action'.¹⁰ That is, (how) does a political community frame its past as a means of present social conditioning? How does it contextualise its

⁶ Simone Weil, *The Need for Roots: Prelude Towards a Declaration of Duties Towards Mankind* (*L'Enracinement, prélude à une déclaration des devoirs envers l'être humain*) (Translation by Arthur Wills, 1952).

⁷ *Ibid.*, at 40.

⁸ Paul Kingsnorth, *The Great Unsettling: Simone Weil and the Need for Roots*, 9 May 2021, *Simone Weil Center for Political Philosophy*, available at <https://simoneweilcenter.org/publications/2021/5/9/the-great-unsettling-simone-weil-and-the-need-for-roots>.

⁹ *Ibid.*

¹⁰ Casey Ford, 'Captured Time: Simone Weil's Vital Temporality Against the State', in Sophie Bourgault and Julie Daigle (eds.), *Simone Weil, Beyond Ideology?* (2020) 161, at 161.

future ambitions? In this, Weil reveals the vitality of time as a political narrative, 'both an object of power and a site for social resistance'.¹¹

Hannah Arendt, in turn, points to the temporality of thinking. Near the end of her life, the German-American political theorist, who had come from a Jewish family, found herself drawn to the mysteries of *The Life of the Mind*,¹² which would become her final (incomplete) project. Her interest was borne of the 'manifest shallowness' and banal 'thoughtlessness' witnessed when reporting on the trial of Nazi war criminal Adolf Eichmann, one of the chief architects of the Holocaust, in Jerusalem in 1961.¹³ In person, Arendt was struck by Eichmann's rather unremarkable and unassuming nature, being 'neither demonic or monstrous'.¹⁴ This stoked her curiosity about his apparent *thoughtlessness* – his ability to disconnect the aberrant nature of his philosophy and ideology from the very real and destructive harm it had caused. She wanted to know where his mind went in the performance of such acts that it could escape the mass violence orchestrated by his own hand. This, ultimately, brought her to her reflections on time, or the 'temporality of thinking'.¹⁵ According to Arendt, the activity of thinking forces a withdrawal from appearances, sending its practitioner (the 'thinking ego') into an inner realm or life displaced both in space and in time, thus creating conditions that permit the emergence of thoughtlessness (in the sense of moral and emotional dissociation).¹⁶ Within this logic, she argues that the relevant question is not about *where* thinking occurs, but *when* in time it sends us. And to this question, she does indeed offer an answer: thinking does not exist in a pure or timeless realm in the sense that Plato might have imagined it, but rather, occurs in the 'gap between past and future',¹⁷ represented as a conflict with time itself. To put this differently, thinking is a rupture in the progression of chronological time, a gap that forces a temporary abandonment of the time of living.¹⁸

Per Massey, 'The temporal conditions of [Arendt's construction of thinking] [...] involve a present that interrupts the ordinary flow of time, a past whose weight pushes forward, and a future whose uncertainty pushes back'.¹⁹ In this context, the

¹¹ *Ibid.*, at 166.

¹² Hannah Arendt, *The Life of the Mind*, vol. 1 and 2 (1978).

¹³ *Ibid.*, vol. 1 at 4.

¹⁴ *Ibid.*

¹⁵ Heath Massey, 'When Are We When We Think? Arendt's Temporal Interpretation of Thinking and Thoughtlessness', 39(2) *Philosophical Topics* (2011) 71, at 72.

¹⁶ Arendt, *supra* note 12, vol. 1 at 201.

¹⁷ *Ibid.*, vol. 1 at 206.

¹⁸ Massey, *supra* note 15, at 75.

¹⁹ *Ibid.*, at 83.

threat of *thoughtlessness* advances from three directions: '[in] failing to engage in the struggle, [in] allowing the future to dominate, or [in] allowing the past to prevail'.²⁰ A careful equilibrium of past and future is essential to sustaining the thinking ego, and thus, allowing either force to dominate the other 'would bring the conflict to an end and destroy the ability to think'.²¹ The conditions facilitating Eichmann's thoughtlessness can be understood to lie in part in such logic, and in part in his most dominant character flaw: his *obedience*. As Arendt explains in *Eichmann in Jerusalem*, Eichmann was adamant that he 'did his *duty*, as he told the police and the court over and over again; he not only obeyed *orders*, he also obeyed the *law*'.²² In this, in his claim that he 'had lived his whole life according to Kant's moral precepts, and [...] a Kantian definition of duty', Arendt was surprised to note that he appeared quite sincere.²³ Eichmann's thoughtlessness, it seems, was the result of an abdication of his agency. In his devout pursuit of the express will of another (the *Führer*), he had abandoned any possibility to pursue his own thoughts, which if interrogated, may have forced him to confront the future consequences of his conduct. Following a similar logic, it was striking to observers that, at his trial, Eichmann was unable to recall numerous details about the nature of his involvement in his crimes, 'exemplify[ing] the kind of amnesia that relieves one of the weight of the past'.²⁴ Through this temporal reflection, therefore, Arendt offers a vital diagnosis of the pathological dissonance between man's humanity and his banality in the face of evil.

However one chooses to interpret time and its meaning and purpose to society, it is evident that the more that is learnt about it, the less that is understood. Time's scope is vast and unknown and exists beyond our cognitive horizons. Its mysteries will continue to challenge us for as long as we engage with it. For these reasons, perhaps, German-speaking Romanian-French poet Paul Celan – born Paul Antschel – invites us to consider a most curious metaphor. In the poem *Corona*, he observes that time 'is a hard nut to crack'.²⁵ He writes:

We shell time from the nuts and teach it to walk;
time comes back again into its husk.²⁶

²⁰ *Ibid.*

²¹ *Ibid.*

²² Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (1963), at 135 (emphasis original).

²³ *Ibid.*, at 135–137.

²⁴ Massey, *supra* note 15, at 86.

²⁵ Paul North, 'Time is a Word in Celan', 9(1) *Crisis & Critique* (2022) 343, at 355.

²⁶ English translation by *ibid.*, at 355; for the original German, see Paul Celan, *Die Gedichte: Neue kommentierte Gesamtausgabe in einem Band* (2020), at 45: 'Wir schälen die Zeit aus den Nüssen und lehren sie gehn: die Zeit kehrt zurück in die Schale.' The exact date of creation of the poem is

Corona begins with the end of Summer. It's opening line depicts the fading vestiges of the joy the season has brought: 'Autumn nibbles its leaf from my hand: we are friends'.²⁷ But with its departure, and the threat of the darkening of the seasons, the author must confront the malaise of time brought on by the harvest season, the distractions of summer's delights fading from view. For Celan, a French-Romanian poet hailing from a German-speaking Jewish family, the word 'time' is an 'obsession'.²⁸ As with Weil and Arendt, it is seen through the prism of a collective trauma – for Celan, the Second World War brought about the loss of his parents to the horrors of a Nazi concentration camp and his own internment in a forced labour camp in Romania until 1944. As one biographer thus suggests, '[s]urely, what Celan witnessed and experienced in Romania during the Holocaust "hurt him into poetry"'.²⁹ In *Corona*, Celan speaks of a struggle to wrest time from the grips of the cyclical inertia created by this history, but it is no *fait accompli*. Even if it is possible to 'crack' the dilemma posed by the uncertainty of time's influence on the self, and even if it can be taught to walk 'rather than to run or fly', Celan concedes that time has a mind of its own and prefers to hide: It returns to its shell.³⁰ This reversion suggests the author's fear of the paralysis of his psychic pain – even in furtive moments of pleasure, his thoughts return to 'dark things' (as the poem puts it) – a cruel belief that time may let one's mind wander to better and more hopeful possibilities only for a moment; the distance it allows is temporary, regression to the moment of violent rupture inescapable.

Tragedy is not the ultimate purpose of time in *Corona*. In its final stanza, the poem returns to the hardness of the nut as time:

It's time people knew!
It's time the stone consented to bloom,
A heart beat for unrest.
It is time it came time.
It is time.³¹

An event is supposed to happen, at last.³² But what is it and what is its significance? For Jerry Glenn, this declaratory moment is an appeal 'for an improve-

unknown. It was first published in Vienna in 1948. It is one of the poems dedicated to Ingeborg Bachmann in 1957 (*ibid.*, at 686).

²⁷ Nitzan Lebovic, *Homo Temporalis: German Jewish Thinkers on Time* (2025), at 240.

²⁸ North, *supra* note 25, at 343.

²⁹ Jonathan Kirsch, *Digging Deeper on the Poet Paul Celan*, 12 June 2019, *Jewish Journal*, available at <https://jewishjournal.com/culture/arts/books/299959/digging-deeper-on-the-poet-paul-celan/>.

³⁰ North, *supra* note 25, at 355.

³¹ John Felstiner, *Paul Celan: Poet, Survivor, Jew* (1995), at *ibid.*, at 343.

³² Celan, *supra* note 26, at 45: 'es ist Zeit, daß man weiß! Es ist Zeit, daß der Stein sich zu blühen bequemt, daß der Unrast ein Herz schlägt. Es ist Zeit, daß es Zeit wird. Es ist Zeit.'

ment in the human condition'.³³ According to John Felstiner, the stone consenting to bloom has significance because '[f]or Celan, who shoveled stones at forced labor and could not give his parents a gravestone, "stone" already stood for mute grief. For it to bloom, he concludes 'there must come [...] a "wind blast of conversion"'.³⁴ In the end, Celan's wish was that tragedy would yield to time: he hoped to discover his humanity again.

Concepts of time are at the centre of Celan's poetics. Literary scholars have identified his interest in the temporal determination of human beings and his questioning of the concept and definition of time. Although Celan's work seems to be informed by the philosophy of *inter alia* Martin Heidegger or Edmund Husserl,³⁵ his approach to time is not formal, systematic, or schematic. Rather, he makes attempt after attempt to suspend the meaning and concept of time in order to discover new temporal syntheses that are not equivalent to continuity or successivity.³⁶ Celan also refers to a 'temporal corona', a concept taken from Husserl (*Zeitgehöft*, 'Farmstead of Time').³⁷ Time is a halo in the sense of being halo-shaped rather than a punctiform line.³⁸ Time becomes a structure upon and around which Celan explores the limits of the sayable or the ineffable.³⁹ In many of his works, Celan reflects on the catastrophic transformation, and this reflection includes a revision of the conventional concept of time. He tries to show that, in addition to the usual forms of historical, causal, and linear time, the individual also perceives timelessness. Paradoxically, the completion of a historical event, in Celan's case the traumatic Holocaust, evokes an awareness of the historical caesura, and thus of the unspeakable and the inhospitable. Writing after the Holocaust means writing after an apocalyptic rupture, where history does not exist, in other words, surrounded by timelessness.⁴⁰

As Celan and his contemporaries suggest, to come to terms with time's relationship to the other, as in something external to oneself – like a thing, an idea, or a third party – we must first confront the limitations of our own abilities to perceive

³³ Jerry Glenn, 'Nightmares, Dreams and Intellectualization in the Poetry of Paul Celan', 51(4) *World Literature Today* (1977) 522, at 524.

³⁴ Felstiner, *supra* note 31, at 54.

³⁵ In particular, Martin Heidegger, *Sein und Zeit: Erste Hälfte* (1927); Edmund Husserl, *Vorlesungen zur Phänomenologie des inneren Zeitbewußtseins* (1928).

³⁶ North, *supra* note 25, at 349.

³⁷ Susan H. Gillespie, 'Translator's Introduction', in Paul Celan, *Corona, Selected Poems* (Translation by Susan H. Gillespie, 2013).

³⁸ North, *supra* note 25, at 358.

³⁹ Leonard Olschner, "'Tief/in der Zeiteinschränkung": Reading Time in Paul Celan's Poetics', 73(4) *German Life and Letters* (2020) 642.

⁴⁰ Inga Bartkuvienė, 'Abejoti dėl laiko. Belaikiškumas vėlyvojoje Paulio Celano kūryboje', 61(4) *Literatūra* (2019) 27.

and rationalise its consequences on our own lives. This, of course, is easier said than done. The temporal narratives discussed capture just a sampling of the many efforts engaged by great thinkers of the day to comprehend time and to make sense of the progression, digression, and evolution of the world around us. In the modern era, certain popular English language idioms – for example, that time moves at a glacial pace, or that it can sometimes feel like it is standing still – capture this struggle to contextualise our understanding and enlightenment, and to give meaning to our grief, through rationalisation of the passage of time. The different kinds of imagery invoked speaks to the diversity of contexts within which time is experienced, and as a result, the lack of consistency in our apprehension of its impact on the other.

Indeed, as intimated by Arendt in particular, the *sensation* of time is a wholly subjective one. Observance of its movement and progression is not a uniformly shared experience. One reason for this is considered by French Philosopher Henri Bergson, who distinguishes between ‘time as we actually experience it, lived time – which he called “real duration” (*durée réelle*) – and the mechanistic time of science’.⁴¹ Mechanistic time, in this context, adopts an objective approach to the interpretation of time, applying a quantifiable numerical meter to the measurement of its advancement across space. That is, it standardises time as a unit of measure distinct from how it is experienced. An hour is an hour, whether that happens in the morning during a snowstorm, in the afternoon at a movie theatre, or at evening repast. By contrast, the *subjective* character of the *durée réelle* suggests that these same moments of time are processed differently because we, its receivers, endure them in different contexts. Urgent anticipation may make time spent waiting feel longer, enjoyment of an activity may make time feel like it has passed more quickly. This is because people are not disinterested observers of the nature of change as a phenomenon that stretches across our lives and is often found in proximity to the events that create a caesura in them. This is as true in a historical, global macrocosm, when we experience international crises, as it is in a microcosm when unanticipated personal events create individualised interruptions. We see time as a measure of our distance to our milestones, the traumas and achievements that define our existence and grant it purpose – it is not always linear, but such is the nature of memory. This understanding seeps into the structures and systems we create to govern our communities. The values and principles that become our norms, rules, and institutions of political and legal governance likewise change and expand as we experience enlightenment.

In undertaking an analytical investigation of time, we should acknowledge the emotional honesty of Bergson’s *durée réelle*. This in turn means that we cannot

⁴¹ John-Francis Phipps, ‘Henri Bergson and the Perception of Time’, 48 *Philosophy Now* (2004) 20; see also Max Horkheimer, ‘On Bergson’s Metaphysics of Time’, 131(9) *Radical Philosophy* (2005) 9.

approach time as monolithic. It is true that in its fullness of scope, the singular concept of ‘time’ defies understanding because an end-state eternity (borrowing the language of Plato) is not fully knowable. How then should the pursuit of legal temporalities inform the work of the legal profession? Should international lawyers accept that imperfection is unavoidable and ‘[suspend their] desire to change the world’, reaching instead towards the foundational objectives of ensuring the rule of law and its principles of stability and constancy through the standardisation of their practices?⁴² Or should they resist such calls to temper their nobler ambitions? Time informs both possibilities. In giving up a desire to grandiosely change the world through legal reform, the profession could then perhaps ‘seriously [pursue] scholarship that is rooted in curiosity about the various lives of international legal thought and practice; in telling stories, from diverse – including unconventional – loci of international law beyond the familiar problem-solving script’.⁴³ Discourses on time would naturally emerge in such reflections given its vital role in shaping the experiences that inform the international community’s ordinary and everyday engagement with international law. Likewise, for those international lawyers who seek to pursue a more perfect ‘utopia’ (as the late, great Antonio Cassese described it)⁴⁴ their goal might be to approximate (as best as they are able) a vision of what a perfect system of governance might be – and then, over time and forged by environmental and social circumstances, to hone and reshape what exists in order to capture what could be.

In either case, the uncertainty produced by the passage of time and the change it brings is not an insurmountable obstacle. Rather, it invites us to approach our inquiry in a different way. In our view, the goal of an erudite examination of time must be one of reduction and de-complexification. What is important for us is not what time *is* in its full magnitude, but rather, what we make of it. Our objective must be to use the tools at our disposal, such as deductive legal reasoning, to draw relevant conclusions and construct critical narratives by means of extraction of a part of the whole, and to grant this part meaning and coherence through specific and particular context (i.e. as a *legal* chronology) via proximity to the conceptually tangible. So, while we can never fully articulate the extent of the meaning of time as a comprehensive, analytical, philosophical, or social framework – and this is certainly true for the scope of this special section – time can nonetheless be studied as an instrument through which critical insights on experience, permanence, change, and possibility can be produced.

⁴² See, for example, Eliana Cusato, Rebecca Mignot-Mahdavi, Sofia Stolk, and Renske Vos, ‘In praise of multiplicity: Suspending the desire to change the world’, 37(1) *Leiden Journal of International Law* (2024) 1.

⁴³ *Ibid.*, at 2.

⁴⁴ Antonio Cassese (ed.), *Realizing Utopia: The Future of International Law* (2012).

III. A Stitch in Time: Unpicking the Law's Temporal Fabric

For us as contemporary students of international law and relations, time is also an awfully hard nut to crack, as Celan put it. Our inquiries share similar motivations. By uncovering recursive and cyclical patterns of inertia in the chronologies of our practice, we become self-aware and better able to confront our indolence – in this context, that which the law often entrenches through practices of historical imperialism, contemporary hegemony, and selective memory. We must set these things aside to give the stone a chance to bloom. Although time is ‘an old problem’ of ‘general fascination’ to international lawyers,⁴⁵ it is *recent* legal scholarship that has brought the possibility of new bloom closer to reality. It is there that the aforementioned themes and critical approaches necessary for authentic self-reflection have become more central to its introspection. Indeed, it is in this context that time has attracted greater attention on both a doctrinal⁴⁶ and theoretical level,⁴⁷ with scholars now more vigorously questioning and challenging the logic and legitimacy of framing international legal discourses in conventionally linear conceptions of temporal ‘progress’.⁴⁸

There are two main rationales, we suggest, for why international law has taken an investigatory turn towards time. These reasons, in turn, invite critical questions about how time has been (and is being) engaged by the discipline. First, time is intrinsically linked to essential characteristics of the international rule of law, these being certainty, stability, and predictability.⁴⁹ That is, these are benchmarks that can only be established if they are proven to be present *over time*. It is this attribute of

⁴⁵ Rosalyn Higgins, ‘Time and the Law: International Perspectives on an Old Problem’, 46(3) *The International and Comparative Law Quarterly* (1997) 501.

⁴⁶ Panos Merkouris, ‘(Inter)Temporal Considerations in the Interpretative Process of the VCLT: Do Treaties Endure, Perdure or Exdure?’, 45 *Netherlands Yearbook of International Law* (2014) 121; Nick Gallus, *The Temporal Jurisdiction of International Tribunals* (2017); Steven Wheatley, ‘Revisiting the Doctrine of Intertemporal Law’, 41(2) *Oxford Journal of Legal Studies* (2021) 484; Andrea Gattini and Marco Dimetto (eds.), *Time and International Adjudication: The Temporal Factor in Proceedings Before International Courts and Tribunals* (2025).

⁴⁷ See, most recently, the volumes Klára Poláčeková van der Ploeg, Luca Pasquet, and León Castellanos-Jankiewicz, *International Law and Time: Narratives and Techniques* (2022); Ben T. C. Warwick and Kathryn McNeilly (eds.), *The Times and Temporalities of International Human Rights Law* (2022); for further references, cf. Sivan Shlomo Agon and Michal Saliternik, ‘Just About Time: International Law’s Temporalities and Our Moment in History’, 118(4) *American Journal of International Law* (2024) 751 (footnotes 2–3); Paula Rhein-Fischer, ‘Multi-Temporalities in International Litigation: Coinciding Times Before the International Court of Justice in Recent Genocide Cases’, 67 *German Yearbook of International Law* (2024) (footnote 1).

⁴⁸ For an overview, see Shlomo Agon and Saliternik, *ibid*.

⁴⁹ Sofia Ranchordás, ‘The International Rule of Law Time After Time: Temporary Institutions Between Change and Continuity’, 45 *Netherlands Yearbook of International Law* (2014) 67, at 68.

temporal persistence that facilitates and upholds the integrity of the international rule of law. How to evaluate continuity and fluctuation in the observance of these values is one of the issues of greatest interest to scholars studying the implications of time on international law, particularly in areas of international human rights,⁵⁰ climate change law⁵¹ and environmental law.⁵² In the case of climate litigation, for instance, concerns of intergenerational justice have been raised to the forefront of international adjudication, leading scholars to observe that there has been an ‘attempt to expand the temporal boundaries of the legally relevant’.⁵³ They have analysed the ‘reactive’ nature (and ‘record’) of international law and called for a shift towards a ‘proactive’ international law.⁵⁴ Similarly, acceleration of technological innovation affects basically all areas of international law, be it human rights, the laws of armed conflict, environmental law (including climate change law), and more.⁵⁵ Recent scholarship critically examines how ‘futuristic moves’ in international law discourses relating to new ‘challenges’, such as those posed by new weapons technologies, ‘govern the present’ and calls for alternative temporalities and trajectories.⁵⁶ While the future seems to be approaching faster and becoming shorter, colonial histories appear to be all the more present in the practice of international law, such as with the International Court of Justice’s (ICJ) *Chagos Opinion*,⁵⁷ or in the much-debated resolution of the Human Rights Council on the negative consequences of the after-

⁵⁰ Fleur Johns, ‘The Temporal Rivalries of Human Rights’, 23(1) *Indiana Journal of Global Legal Studies* (2016) 39; Kathryn McNeilly, ‘How time matters in the UN Human Rights Council’s Universal Periodic Review: Humans, objects, and time creation’, 34(3) *Leiden Journal of International Law* (2021) 607; Warwick and McNeilly, *supra* note 47.

⁵¹ Julia Dehm, ‘International law, temporalities and narratives of the climate crisis’, 4(1) *London Review of International Law* (2016) 167.

⁵² Yoshifumi Tanaka, ‘Reflections on Time Elements in the International Law of the Environment’, 73 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2013) 139; Christine Jill Winter, ‘Does Time Colonise Intergenerational Environmental Justice Theory?’, 29(2) *Environmental Politics* (2020) 278; Eliana Cusato, ‘Progress and Linear Time: International Environmental Law and the Uneven Distribution of Futurity’, 84 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2024) 865.

⁵³ Alessandro Drigo, ‘Future Generations in Climate Litigation: Early Whispers of an Intergenerational Law?’, 25(7) *German Law Journal* (2024) 1120, at 1121.

⁵⁴ Michal Saliternik and Sivan Shlomo Agon, ‘Proactive International Law’, 75 *UC Law Journal* (2024) 661.

⁵⁵ Cf. Irene Couzigou and Edouard Fromageau (eds.), *Technological Change and International Law: Testing the Adaptability of International Law* (forthcoming).

⁵⁶ Rebecca Mignot-Mahdavi, ‘Futurism: Neglected Histories of International Law’, 27 *Journal of the History of International Law* (2025) 154.

⁵⁷ International Court of Justice (ICJ), *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 25 February 2019, ICJ Reports 2019, 95; cf. Thomas Burri and Jamie Trinidad (eds.), *The International Court of Justice and Decolonization: New Directions from the Chagos Advisory Opinion* (2021).

effects of colonialism on the enjoyment of human rights,⁵⁸ or in the significance of discussions on imperialism in the conclusions of the UN Anti-Racism Committee on the Netherlands or France.⁵⁹ At the same time, the temporal distance to the past poses a challenge for colonial injustice in terms of accountability and liability for misconduct occurring in generations prior. In implementing the principle of intertemporality, there is a danger of selective application of contemporary law.⁶⁰

This wellspring of robust academic engagement with international law's temporalities has naturally given rise to serious questions about the methodologies favoured, and why in particular legal analysis has sometimes gravitated towards overly-simplistic historiographical narratives. Reflections that use time as an analytical tool but do not centre the notion of temporality or rigorously engage with its complexities during the process may passively and uncritically adopt a 'mechanistic' approach to time to tell linear or continuity-driven stories about our histories that mostly draw from mainstream accounts while pushing other non-conventional narratives to the margins. But, as intimated, there is a compelling reason for why they do so. In contrast to the potential chaos entailed by the embrace of a socially-constructed, disordered notion of temporality (that is, one designed to reflect the fractals and interruptions of time as experienced in *durée réelle*), mechanistic time ensures constancy and coherency – and thus holds great appeal to advocates of a 'safe' and 'stable' international rule of law.

Consider, for example, recent pushback against the once (and potentially still) conventional wisdom that the use of force by States was unregulated by international law before the adoption of the Kellogg-Briand Pact and the United Nations Charter. As Hendrik Simon puts it, the 'prevailing tenet[]' in legal scholarship is that 'prior to the early twentieth century[] sovereign states held a "free right to go to war" (*liberum*

⁵⁸ United Nations Human Rights Council, 'Negative Impact of the Legacies of Colonialism on the Enjoyment of Human Rights', UN Doc. A/HRC/RES/48/7, 8 October 2021.

⁵⁹ Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Combined Twenty-Second to Twenty-Fourth Periodic Reports of the Kingdom of the Netherlands', CERD/C/NLD/CO/22–24, 16 November 2021, at para. 28; Comité pour l'élimination de la discrimination raciale, 'Observations finales concernant le rapport de la France valant vingt-deuxième et vingt-troisième rapports périodiques', CERD/C/FRA/CO/22–23, 14 December 2022, at paras. 33–34.

⁶⁰ Matthias Goldmann, "Ich bin Ihr Freund und Kapitän": Die deutsch-namibische Entschädigungsfrage im Spiegel intertemporaler und interkultureller Völkerrechtskonzepte, in Philipp Dann, Isabel Feichtner, and Jochen von Bernstorff (eds.), *(Post)Koloniale Rechtswissenschaft, Geschichte und Gegenwart des Kolonialismus in der deutschen Rechtswissenschaft* (2022) 499, with further references; an obligation to give satisfaction could be linked to ethical norms of international law as part of contemporary positive law through a reinterpretation of the rules of intertemporality, as a bridge to the past yet to be built, cf. Andreas von Arnould, 'How to Illegalize Past Injustice: Reinterpreting the Rules of Intertemporality', 32(2) *European Journal of International Law (EJIL)* (2021) 401.

ius ad bellum).⁶¹ Agatha Verdebout likewise observes that the ‘consensus’ converging around this belief is so forceful that ‘some authors have not hesitated to qualify any attempt to question it as “absurd” – despite evidence, she opines, that ‘[m]ost nineteenth century international lawyers [...] appeared to consider that the use of force was far from an unrestricted prerogative of States’.⁶² Simon similarly asserts that such a view cannot be established either in ‘nineteenth-century state practice’ nor in the positions of ‘the majority of international legal scholars’ of the day.⁶³ By contrast, he asserts, ‘throughout the [19th] century, war and other forms of military violence were regarded as in need of justification’.⁶⁴ In other words, Verdebout and Simon have separately concluded that in the legal college’s pursuit of a strong argument, it has constructed and entrenched a convenient but erroneous understanding of the past. The end result, as Ingo Venzke explains, is that international law can then be ‘leveraged’, as it has been ‘throughout the centuries to justify or to critique the use of force in international relations’.⁶⁵

Why should it matter if international law embraces or accommodates perspectives on time that challenge its traditional Circadian rhythms? What is the practical purpose of rectifying distant historical records? Our response to such questions is that contestation is a healthy process through which truth is uncovered, and insisting on historical integrity is a strong indicator that best disciplinary practices are being observed. But more than this, how we interrogate our past directly affects how we perceive our legal and political responsibilities to society in the present. To properly appreciate what is meant by this claim, we must consider the second reason for international law’s recent interest in its temporal dimensions. The history of international law has long been haunted by the words allegedly uttered by infamous Nazi war criminal Hermann Göring during his trial at Nuremberg: ‘*Der Sieger wird immer der Richter und der Besiegte stets der Angeklagte sein*’, or ‘the victor will always be the judge, and the vanquished the accused’.⁶⁶ In a later idiomatic iteration of the phrase that has been subsequently attributed to British Prime Minister Winston Churchill, this is expressed as ‘history is written by the victors’. This is a damning

⁶¹ Hendrik Simon, *A Century of Anarchy? War, Normativity, and the Birth of Modern International Order* (2024), at 3.

⁶² Agatha Verdebout, *Rewriting Histories of the Use of Force: The Narrative of ‘Indifference’* (2021), at 1–3.

⁶³ Simon, *supra* note 61, at 7.

⁶⁴ *Ibid.*

⁶⁵ Ingo Venzke, *Symposium on Rewriting Histories of the Use of Force: What Narratives Do*, 16 February 2023, *Opinio Juris*, available at <https://opiniojuris.org/2023/02/16/symposium-on-rewriting-histories-of-the-use-of-force-what-narratives-do/>.

⁶⁶ Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (2000), at 8.

account of time and historical record that unsettles because at its core lies (more than) a kernel of truth. In this sense, the turn to history in international legal scholarship provides a necessary salve. It contributes not only to an increased interest in time as a theoretical and methodological problem, but also, within the parameters of that interest, fostered new spaces for contestation in international legal thought, allowing for potential historical injustices to be dissected and confronted.⁶⁷

In this context, novel critical approaches to history allow for the potential untruths of ‘victors’ narratives’ to be rewound in various ways. For example, by taking an approach to time that frees our legal narratives from their static, diurnal instincts, we as international lawyers become better at recognising the blind spots in our present fields of vision, and thus, can more confidently peel back the curtain on how we practice our discipline. In decades past, critical legal reckonings – from feminist legal theory to critical race theory and so on – were ‘othered’ and relegated to the peripheries. Time was complicit in entrenching the imperial powers and hegemonic policies that, for whatever reason, repudiated and marginalised these approaches. But it has also been responsible for their emancipation. In more recent years, international law has made dramatic strides in unpacking its relationship with time and exploring its complicity with the bad habits and dishonest practices that had infected it. Many once devalorised critical legal theories now find themselves in advantageous positions, newly entering the academic zeitgeist. Third World Approaches to International Law (TWAIL), for example, pose an uncomfortable, oppositional historical account of international law as ‘a predatory system that legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West’,⁶⁸ and thus, has not always been welcomed by the profession. Under the shadow of TWAIL, ‘the Third World has [historically] [...] viewed international law as a regime and discourse of domination and subordination [...]’.⁶⁹ Despite its long history, which ‘stretches back to the decolonization movement that swept the globe after World War II’,⁷⁰ TWAIL was for a long time viewed as a discourse beyond the mainstream. But it has ‘survived tests of time, acrimony, and even self-doubt [...] [even] under inhospitable conditions’, and today, ‘the list of publications [on it]

⁶⁷ Harison Citrawan, *Law, Time and Historical Injustices: A Critical Analysis of Intuitive Judicial Reasoning* (2024); Thomas Kleinlein, ‘International Legal Thought: Creation of a Tradition and the Potential of Disciplinary Self-Reflection’, 16 *The Global Community: Yearbook of International Law and Jurisprudence* (2016) 811; David M. Scott, ‘Rethinking the Turn to History as a Turn to Time in International Law’, 9 *Jus gentium: Journal of International Legal History* (2024) 401; Thomas Kleinlein and Jean d’Aspremont, ‘The Turn to Historiography in International Law – Limitations and New Horizons’, 27 *Journal of the History of International Law* (2025) 7.

⁶⁸ Makau Mutua, ‘What is TWAIL?’, 94 *Proceedings of the ASIL Annual Meeting* (2000) 31, at 31.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

explodes into a cornucopia of scholarly engagement with all matters international, legal, and Third World'.⁷¹ Time begets change, begets societal progress, begets realisation of the 'need to democratize the discipline and the imperative to critique the structures of international law that reproduced relations of hierarchy and discrimination'.⁷² While this might have once seemed implausible, one of the movement's most authoritative advocates, Antony Anghie, recently declared that '[i]t is now apparent that TWAIL scholarship has grown in range and influence and has established itself as an important movement that has illuminated and continues to illuminate the workings of international law'.⁷³

The critical turn in international legal history further grants this vital regulatory framework the opportunity to overcome the liberal narrative of cosmopolitan progress that underpins international law by drawing a more detailed, nuanced, and politically contingent picture of its historical development.⁷⁴ For Anne Orford, the criterion used to choose the preferred method is the effectiveness of the 'legal intervention'.⁷⁵ Critical and postcolonial historiography sees itself as politically engaged and as an attempt to redefine a world that is taken for granted and to understand it differently.⁷⁶ History is being written in order to change the world. This implies that an important part of the historiographical turn in international law is also a 'turn to presentism'. International law scholars obviously have an increased need to establish connections between the past and the present of the norms, institutions, and doctrines of international law.⁷⁷ Their research is motivated by perceived injustices in the current world order, but also by the rejection of projects to shape it in the mould of rationality, efficiency, and abstract justice – in this sense, leading them to 'forget' (the objective point of) history.⁷⁸ This 'motivational

⁷¹ Mohsen al Attar, 'TWAIL: A Paradox Within a Paradox', 22(2) *International Community Law Review* (2020) 163, at 165.

⁷² Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective', 34(1) *EJIL* (2023) 7, at 8.

⁷³ *Ibid.*

⁷⁴ Ignacio de la Rasilla, *International Law and History: Modern Interfaces* (2021), at 78.

⁷⁵ Anne Orford, *International Law and the Politics of History* (2021), at 318–319.

⁷⁶ Sundhya Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law', 1(1) *London Review of International Law* (2013) 63, at 65.

⁷⁷ George Rodrigo Bandeira Galindo, 'Martti Koskenniemi and the Historiographical Turn in International Law', 16(3) *EJIL* (2005) 539, at 541.

⁷⁸ Anne Orford, 'The Past As Law or History? The Relevance of Imperialism for Modern International Law', in Mark Toufayan, Emmanuelle Jouannet, and Hélène Ruiz Fabri (eds.), *Droit international et nouvelles approches sur le tiers-monde, Entre répétition et renouveau* (2013) 97, at 100–106; cf. Natasha Wheatley, 'Law and the Time of the Angels: International Law's Method Wars and the Affective Life of Disciplines', 60(2) *History and Theory* (2021) 311, at 311–330; Jean d'Aspremont, 'International Law and the Rage against Scienticism', 33(2) *EJIL* (2022) 679.

presentism',⁷⁹ as legitimate as it is, has an impact on the reconstruction of the past.⁸⁰ History should be alive, present, and not separated from the present.⁸¹ Accordingly, the (colonial) past and the present are intertwined. The partial change in international law scholarship motivated in this way – from the narrative of progress to the historicisation of the present – can be understood as an example of presentism in the sense of the French historian François Hartog.⁸² The traditional interplay between past, present, and future has shifted. An emphatic orientation towards the future has either given way to a predominance of the past or has dissolved into an expanded present. The present is less and less able to leave the past behind, while the future is visibly tapered. The present swallows both the past and the future, and history no longer goes 'forward'.⁸³ Hartog understands 'presentism' as the new, now dominant 'regime of historicity' from the perspective of historiography. For him, regimes of historicity are social experiences of time in different constellations, places, and historical times. Hartog argued that we live in a 'present' age. Following Reinhart Koselleck, he stated that the categories and the relationship between experience and expectation determine our sense of time and noted that this has changed in contemporary presentism, while modernist futurism was poor in experience but rich in expectation. Today, the idea of the future is unsettling, rather opaque and threatening, and does not promise progress.⁸⁴

IV. Re-Conceptualising Temporality for International Law: From Chronotopes to Uchronia and Back Again

In recent years, the world has found itself on the precipice of one global crisis after the next, a phenomenon now so familiar that it has birthed new terminology – that of the global 'polycrisis'.⁸⁵ In exploring the role of time both within and outside the

⁷⁹ David Armitage, 'Modern International Thought: Problems and Prospects', 41(1) *History of European Ideas* (2015) 116, at 119, with further references.

⁸⁰ Janne E. Nijman, 'An Enlarged Sense of Possibility for International Law', in Ingo Venzke and Kevin Jon Heller (eds.), *Contingency in International Law, On the Possibility of Different Legal Histories* (2021) 92, at 102.

⁸¹ Wheatley, *supra* note 78, at 318.

⁸² François Hartog, *Régimes d'historicité: Présentisme et expériences du temps* (2003), at 18, 119–127; cf. Kleinlein and d'Aspremont, *supra* note 67, at 23–24.

⁸³ Alexander C. T. Geppert and Till Kössler, 'Zeit-Geschichte als Aufgabe', in Alexander C. T. Geppert and Till Kössler (eds.), *Obsession der Gegenwart, Zeit im 20. Jahrhundert* (2015) 7, at 8, with further references.

⁸⁴ Cf. also Philipp Dann, *It's About Time: Temporality and Constitutionalism*, at 58 (manuscript on file with the authors).

⁸⁵ See, Jonathan Zeitlin, Francesco Nicoli, and Brigid Laffan, 'Introduction: the European Union Beyond the Polycrisis? Integration and Politicization in an Age of Shifting Cleavages', 26(7) *Journal*

context of these catastrophes, this special section is defined as much by the diversity of the subjects considered as it is the plenitude of ideas put forward to confront them. The six contributions that follow address a broad range of topics pertaining to the relationship between time and international law. They engage in a diverse spread of temporal discourses that touch on colonialism, investor-State dispute settlement, the ICJ's recent genocide cases, deep seabed mining, human rights, or climate change. Several articles explore distinct temporal paradigms in the context of international law, and question the linearity and crisis-orientation that dominates international law's conception of time, where short time horizons and notions of timelessness⁸⁶ figure prominently.⁸⁷ The contributions further explore and challenge the 'clock-work' of international law. They highlight the added value of alternative concepts: cyclicity, layered structures, events, spatiotemporality, performativity, and poly-sense.

These contributions are now considered.

In Kurt Vonnegut's celebrated 1969 semi-autobiographical science fiction novel *Slaughterhouse Five*, Billy Pilgrim becomes unmoored in a version of time and history that is as much fractured and fluid as it is fictional and confounding.⁸⁸ The novel catapults its protagonist into vastly different corners of his life through the mechanism of unstable time travel – he is bounced back and forth between the horrors of life as a soldier at the Battle of the Bulge and later prisoner of war in Dresden near the end of World War II (this experience being drawn directly from Vonnegut's own life) and the mundanity of a later existence in mid-20th century American middle-class suburbia. This 'lived' experience is peppered with interruptions where Billy is, according to his disturbed mental recollection, kidnapped by an alien race of extra-terrestrials. *Slaughterhouse Five* creates an unsettling picture of time and memory fractured by trauma. The novel opens with the phrase, written from the point of view of the author rather than his protagonist, 'All this happened, more or less'.⁸⁹

Taking similar cues, Paula Rhein-Fischer reckons with the inconstancy of memory in time. As is the case with Vonnegut's embattled hero, she acknowledges that

of *European Public Policy* (2019) 963; Michael Lawrence, 'Global Polycrisis: the Causal Mechanisms of Crisis Entanglement', 7 *Global Sustainability* (2024) 1.

⁸⁶ Johns, *supra* note 50, at 44, 53.

⁸⁷ Shlomo Agon and Saliternik, *supra* note 47, at 758–768; see, also, Christian Djefal, 'International Law and Time: A Reflection of the Temporal Attitudes of International Lawyers Through Three Paradigms', 45 *Netherlands Yearbook of International Law* (2014) 93: paradigms of atemporality, temporality, and fluxus.

⁸⁸ Kurt Vonnegut Jr., *Slaughterhouse-Five or The Children's Crusade* (1969).

⁸⁹ *Ibid.*

memory cannot be wholly relied upon, and asks how temporal context can distort our collective recollections. In the case of litigation before international tribunals, she thus suggests that memories of genocide are being ‘performed’ by the parties involved in several recent genocide cases before the ICJ (these being, between The Gambia and Myanmar, Ukraine and Russia, South Africa and Israel, and Nicaragua and Germany). Through what she describes as performative strategic litigation, Rhein-Fischer traces how States have introduced their own divergent memories of specific historical trauma into the Court proceedings. In presenting their cases before the ICJ, the parties put forward their claims as to the application of the law of genocide, and the Court is asked to take a particular view on an issue and decide which performed temporal memory is legitimate. Proceedings initiated by South Africa against Israel in December 2023,⁹⁰ for instance, concerned the latter’s war in Gaza following Hamas’ terror attacks of 7 October. The pleadings can be seen – according to Rhein-Fischer – as ‘a performative memory of [the applicant’s] own experience of apartheid’.⁹¹ Its decision to engage the Court in this matter, despite having no direct involvement in the events of the conflict themselves, is located in South Africa’s own history and memory of Apartheid. But this naturally pitches the applicant State’s historical trauma against the *respondent’s* ‘performance’ of its memories and experience of the genocide of the Jewish people during World War II.⁹² The Court is then placed in an unusual position, forced to evaluate the ‘memory performances’ of the States before it.

Rhein-Fischer’s article highlights the tension and indeed ‘inherent contradiction’ between universal international law on the one hand and the various performative memories and multiple temporalities that become apparent when States invoke national memories before international courts. She builds on Reinhart Koselleck’s notion of the simultaneity of the non-simultaneous (*Gleichzeitigkeit des Ungleichzeitigen*) and his theory of multiple ‘layers’ or ‘sediments’ of time (*Zeitschichten*), which differ in duration and origin and are nonetheless present and effectual at the same time. Arguably not too far from Celan, Rhein-Fischer demonstrates that traumatic historical events disrupt the flow of time and separate different layers or ‘registers’ of time, whether due to differences in speed, acceleration or deceleration, interruption, or continuity.

Further challenging the linear and unidirectional approaches to time that allegedly dominate international legal scholarship, Rebecca Mignot-Mahdavi argues that the history of international law as a field should pay more attention to events

⁹⁰ ICJ, *South Africa v. Israel*, Application instituting proceedings, 29 December 2023, available at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>.

⁹¹ Rhein-Fischer, *supra* note 47, at Section II.A.

⁹² *Ibid.*, at 13.

and how they ‘punctuate’ international legal narratives. Drawing in particular on Paul Veyne and Michel Foucault, Mignot-Mahdavi praises a ‘disorderly account’ of the development of international law in time. In her words, events are not static markers or short-term facts, but ‘polymorphous, dynamic constructs’ and ‘products of a network of interactions, ideologies, and practices that unfold across time’.⁹³

Mignot-Mahdavi’s article can perhaps be viewed as a form of constructive conversation with Hilary Charlesworth’s seminal 2002 article ‘International Law: A Discipline of Crisis’,⁹⁴ in which the author – on the back of a flurry of rush-to-print reactions to the 1999 NATO intervention in Kosovo – first identified the tendency of international law to construct itself around profession-defining ‘crises’ (i.e. ‘events’). The expediency of such knee-jerk responses, both in support and repudiation of the NATO intervention, ensured that those write-ups that were quickest to publish would become the tentpoles of mainstream legal opinion for years to come – in effect, establishing themselves as the authoritative interpretations of the events at hand. However, in doing so, Charlesworth expressed two particular fears: the first that the outcomes of these processes was ‘technically limited because it rests on truncated and selective understandings of events’ and secondly, that it ‘diverts attention from structural issues of global justice’.⁹⁵ The closer we zoom into the microcosm of such disasters, she opines, the more ‘international law steers clear of analysis of longer term trends and structural problems’.⁹⁶ Mignot-Mahdavi examines the role of such crises as ‘historiographic analyses [...] as self-contained turning points that punctuate a linear narrative of progress or transformation, marking continuities or ruptures’.⁹⁷ A linear history studied only through such events, which tend to be shaped mostly by powerful political actors operating on the global stage (rather than by comparatively ‘weaker’ Global South States whose influence by contrast tends to be experienced incrementally through their everyday engagement with international law) is thus more predisposed to narratives that advance an overly uncomplicated picture of ‘progress or transformation’, regardless of factual accuracy.

In her striking contribution, Jessie Hohmann conducts a critique of the linear and progressive conception of time in international law beginning with an examination of the inseparability of time and space in the concept of the ‘chronotope’, iconography borrowed from literary theorist Mikhail Bakhtin. Hohmann’s temporal

⁹³ Rebecca Mignot-Mahdavi, ‘In Praise of Disorder: Conceptualising Events in International Law’, 67 *German Yearbook of International Law* (2024).

⁹⁴ Hilary Charlesworth, ‘International Law: A Discipline of Crisis’, 65(3) *Modern Law Review* (2002) 377.

⁹⁵ *Ibid.*, at 380.

⁹⁶ *Ibid.*, at 389.

⁹⁷ Mignot-Mahdavi, *supra* note 93, at Section II.A.

interests lie with how the past is expressed in the legal-physical spaces of the present (or in her words, their 'spatiotemporalities'). Recalling personal visits to botanical gardens in the metropolises of London, United Kingdom, and Sydney, Australia, she reflects on how culture has, through time, come to enshrine hegemony. She explores how these gardens serve to support and justify the legitimacy and legality of Empire and its colonial project through specific chronotopes or spatiotemporalities that harness and replicate the global reach and linear, progressive time of international law. In her article, the chronotope, which (through Bakhtin) she defines as the 'artistic expressions in literature' of the 'connectedness of spatial and temporal relations[]',⁹⁸ is engaged to contextualise efforts to preserve historical Botanical gardens through inclusion in UNESCO World Heritage lists by illuminating their backgrounds as 'artefact[s] of [...] imperial domination of plants, people, and places'.⁹⁹ Following posthuman and new materialist thinking, Hohmann contrasts these linear chronotopes with vegetal spatiotemporality that opens up potential paths to resist and contest a linear, progressive view of time and space. In doing so, her goal is 'not to bring those chronotopes within the fold of colonising western, anthropocentric botanic time, but to point to paths of hope, and pockets of escape, [...] from the relentless progress narratives of international law and their imposition on the vegetal world'.¹⁰⁰

Complementing the critical positions on linear time favoured by the other contributions to this section, Monica Garcia-Salmones Rovira embraces the sagacity of this logic through exploration of how it facilitates the recurrence and reproduction of certain fundamental juridical principles that have now been embedded in a kind of 'global law'. Global law, she explains, is a 'capacious container of juridical and political principles, which the human species recurrently acts on, despite backlash, wars, and destruction'.¹⁰¹ It can be described as a bundle of juridical resources that allow human beings, here in the context of international investment, to conduct fair negotiations, equity, and dispute resolutions among peoples. She argues that the repetition of certain principles over time, when understood within this context, serves a vital purpose by reinforcing their importance to the global legal architecture as a whole. Their organic replication over time and across space is

⁹⁸ Mikhail M. Bakhtin, 'Forms of Time and the Chronotope in the Novel: Towards a Historical Poetics', in Michael Holquist (ed.), *The Dialogic Imagination: Four Essays* (translation by Caryl Emerson and Michael Holquist, 1981) 84, as cited in Jessie Hohmann, 'Chronotopes, International Law, and the Botanic Gardens of Empire and Colony', 67 *German Yearbook of International Law* (2024), at Section II.

⁹⁹ Hohmann, *ibid.*, at Section I.

¹⁰⁰ *Ibid.*, at 25–26.

¹⁰¹ Monica Garcia-Salmones Rovira, 'Now and Yet Not New: Principles of Global Law in UNCITRAL Working Group III', 67 *German Yearbook of International Law* (2024), at Section II.

demonstrative of their fundamental nature, their cyclicity endowing them with a 'different substantial quality'. The persistence by which they continue to emerge across eras, particularly in the face of unjust turns in positive law, is due to the irresistible nature of the promise of justice that they embody, a characteristic that identifies them as a species of natural law. Indeed, such principles are not contingent. They 'repeat, sometimes against all odds', be they timeless in a Neoplatonist conception of time or 'enduring' in Newton's sense.¹⁰² In this sense, she argues, linear time is not 'straight' but rather curved along the moral arc of the legal universe, ready to re-assert itself to ultimately correct the efforts of the powerful to unjustly reformulate reality. This theory forms the basis of Garcia-Salmones Rovira's examination of the development of the work of Working Group III of the United Nations Commission on International Trade Law during the first years of its operation as an institution of global law. She examines how these principles re-emerged after being suppressed for decades due to neoliberal considerations of efficiency and corporate profiteering, becoming foundational to the efforts of the working group. The vitality of these principles, she asserts, vests us with a level of informed agency that allows us to operate as a society that reaches for justice and fairness in all our engagements. In this sense, these features of global law bestow us as a society with the agency to either produce justice or understand what it means to be just and recognise it as a goal to be pursued.

There is perhaps no temporal battle being fought more vigorously today than that undertaken on behalf of the rights of 'future generations', as evidenced by the case law of the European Court of Human Rights. From *Duarte Agostinho and Others v. Portugal and 32 Other States*¹⁰³ (in which a group of six Portuguese young people petitioned the Court to address alleged violations of their rights due to a collective failure by States to sufficiently respond to the threat of climate change) to *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*¹⁰⁴ (wherein the Court queried the respondent State's obligations to future generations as expressed in notions of intergenerational equity and the principle of precaution, despite the subject of the case *not* being about young people but rather the impact of climate change on a group of older women), it is evident that the heavy carbon footprint of our highly industrialised world is no longer being ignored by our judicial institutions.

In her article, Franziska Berg seeks to articulate the boundaries of the amorphous concept of 'future generations', and to confront the challenges involved in envi-

¹⁰² *Ibid.*

¹⁰³ European Court of Human Rights (ECtHR), Grand Chamber, *Duarte Agostinho and Others v. Portugal and 32 Others*, Appl. No. 39371/20, Decision, 9 April 2024.

¹⁰⁴ ECtHR, Grand Chamber, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Appl. No. 53600/20, Judgment, 9 April 2024.

sioning the imaginary prospects of presently non-existing classes of people before contemporary tribunals. Who is part of this category of persons and what does inclusion entail? Can children be part of a future generation if they already exist as part of this generation? And if someone does not yet exist, what kind of legal personhood can be imagined for them? Berg identifies three temporal narratives that dominate current efforts to conceptualise and define future generations as potential rights holders (particularly in context of international human rights law): progressive development, linearity, and temporal universal human rights protection. She recognises temporal linearity as a particularly dominant narrative that is nonetheless challenged by more cyclical perceptions, arguably representing another variant of a 'temporal corona'. As people's life spans overlap into the future, the very notion of 'generation' suggests a more cyclical conception of time as preferable to separate units of past, present, and future. Interestingly, according to Berg, some approaches also combine linearity and the cyclicity of time. These approaches regularly assume that children and (yet unborn) future generations share considerable interests, and this framing implies the risk that the reconceptualisation of children's rights for future generations distracts from vulnerabilities of children in the here and now.

This conversation continues across two further reflections: the conceptualisation of the rights of this class of future persons, and in regards to matters of jurisdiction. In the former case, Berg engages the Maastricht Principles on the Human Rights of Future Generations to further explore legal efforts to articulate the contours of 'future generations'. Here, in contrast to narratives of linearity, or perhaps complementary to them, she acknowledges that legal developments increasingly recognise cyclicity within 'generational' narratives, in that children fit in both current and future categories. While there are good reasons to conflate these rubrics in such a manner, there are also reasons to be cautious. Children's current rights and present interests may not be the same as those relevant to their future, for instance, and thus may require different litigious approaches. In regards to jurisdiction, Berg considers (amongst other issues) whether the conceptual framing of 'extraterritorial' jurisdiction, which relates to physical spaces, can be analogised as a concept of 'extra-temporal' jurisdiction, which would allow courts to confront the future impact of State's present conduct. Here, she considers the challenges her three temporal narratives present to law's future-looking orientation. Ultimately, Berg recognises the need to engage with 'plural temporal perceptions and alternative narratives'.¹⁰⁵

A dream-like contribution by Bérénice K. Schramm attempts to unseat its readers by conjuring a sense of dysphoria not unlike how non-linear time is experienced. Through engagement in various critical legal theories, from feminist to decolonial,

¹⁰⁵ Franziska Berg, 'Challenging Time(s) for Future Generations' Human Rights', 67 *German Yearbook of International Law* (2024), at Section III.

Schramm envisions multiple worlds experienced through time's potential to deconstruct and reconstruct possibility endlessly. In this way, she intertwines international law's past, present, and future by articulating a complex, evocative, and deliberately disturbing 'polysensual' approach to her subject matter. A curious tension can be found between Schramm and Mignot-Mahdavi's vision of the role of 'events' as temporal milestones. Met with scepticism by the latter, Schramm's paper both leans into and away from the epochal nature of events: alongside violent occasions recognisable to many merely by reference to their calendar entries (such as 7 October 2023 or 9/11, for example), Schramm implies we should also memorialise dates whose importance might not be immediately obvious to readers. For example, she points to 25 November 1960, the day when three sisters – Patria, Minerva, and Maria Teresa Miraba – opposed to the brutal dictatorship of the Dominican Republic's Rafael Trujillo were assassinated in acts of political violence orchestrated by the State's secret police. This date now serves as the International Day for the Elimination of Violence against Women.¹⁰⁶ Her purpose in drawing attention to these dates is to affirm that time is a shared and immersive experience – one that, through death/extinction as its ultimate marker, paradoxically signals equality and difference. Thus, she asks, 'which lives are to have a chance, ought to be given a chance and how? Or else, which (un-)dead lives can irremediably and immensely effect our current and future living?'.¹⁰⁷ Schramm refers to 'the haunting of international law', by which she means the time-based and affective dimension of law and violence's co-implication and consubstantial collective production (and erasure) of grief. As such, 'polysensually' thinking about time sheds light on specters that shape the current state of the world, and of the discipline of international law. To find some way out of it, she further engages the concept of 'uchronia' (rather than utopia or dystopia) to give meaning to 'othered temporalities' that are otherwise subsumed under the meta-narrative of the postcolonial nation. In this vision of uchronia, tied to a repoliticisation of hope, Schramm offers a reflective note about how there exists different temporal realities where past historical traumas have been reconciled with new possibilities, and such realms still have a chance to be brought into our own.

V. Conclusion

'How does our perception of time affect our understanding of international law?' Faced with this question, the articles in this section all begin in the same place. Unsurprisingly, however, each author has gone on a very different journey to find

¹⁰⁶ Bérénice K. Schramm, 'The Haunting of International Law: "Making Polysense" of our Uchronian Times of In/Justice', 67 *German Yearbook of International Law* (2024) at Section II.B.

¹⁰⁷ *Ibid.*, at Section II.A.

their respective answers. Thus, the articles they have written yield vastly distinct – yet still deeply thoughtful – insights. The stories they tell are wholly unique. The enthusiasm, creativity, and academic curiosity that have led to their creation is evident. They reveal their authors' strikingly diverse sets of values, belief systems, and outlooks. Thus, whether or not this section provides readers with a new perspective on time, or inspires them to envision a normative order better or greater than what currently exists, we believe it will at least contribute to the recognition of the complexity of these discourses by demonstrating the *abundance* of the tapestry of time.

Still, we were keen to determine if a thematic golden thread connected these authors' approaches to time – and if so, how? Besides the obvious (and obviously superficial) nature of the connection created by the question initially posed, what did the unique experiences, educations, backgrounds, and relationships of these authors to their respective fields of research reveal about the profession as a whole? For us, our interest was directed at (amongst other issues) the comparison between the familiar mechanistic nature of linear time and the implications of the chronological as a socialised construct seen through the prism of certain, particular experiences and world views. As individuals, time marks personal growth and change in our lives, commemorated through the achievement of core milestones. Should 'time and the law' be understood in the same way, defined by the crises and events that mark its turning points? Should the value of time to law be defined solely by its capacity to facilitate progress, or is its meaning more complex? In evaluating such questions through study of the articles that follow, we found as many incongruencies as synergies in the comparison. A study of law through time reveals how its normative core endures, even as the political networks and trappings that form around it expand, re-organise, corrode, and begin again. Time achieves this by laying bare the system's weaknesses and vulnerabilities and driving it to change. As with our own individual pursuits of enlightenment, time permits international law the opportunity to evolve and mature into something that better serves its constituents. It reminds us that the pilgrimage involves as many valleys as hills. And it affirms the nature of the project as an ongoing struggle that is never complete. Spread across a range of discourses, from law and culture and global trade to human rights and genocide, the arguments made within this focus section take on different forms, but the ultimate destination – although always slightly out of reach – remains largely the same: to try and capture, in some sense, Plato's likeness of eternity. Thus, we can draw at least one furtive conclusion about time and international law. If we accept that it is a kind of social construct whose purpose is to express the progress of man's search for utopia – or alternatively, his desire for normative integrity and stability in ubiquity – then for us as a discipline of international lawyers, time is a measure of our stubborn advance towards wisdom.

