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RULES FOR THE ROGUE:

REVIVING THE INTERNATIONAL RULE OF LAW

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I.

INTRODUCTION

As international disputes lawyers, our work routinely involves disputes in places marked by conflict or instability.[1] But the current environment feels different. The scale of today's conflicts—and, in particular, the role that law plays in resolving global disputes—appears to be changing. The traditional flag-bearers of the rule of law, especially the U.S., are now openly reconsidering whether a rule-of-law paradigm still makes sense. Economic coercion or military force is seen as a more efficient tool to accomplish state objectives. I would like to explore what that shift means for the future of international dispute resolution.

First, I address how the rule of law emerged as the primary paradigm to resolve international disputes. Second, I address why the rules-based order is under strain. Third, I consider where we go from here.

II.

THE EMERGENCE OF THE RULE OF LAW PARADIGM

It is easy to take for granted the international rule-of-law system that shaped the latter part of the twentieth century and most of the twenty-first—especially for those who did not live through a world war. At its core, this system is premised on state sovereignty: the idea that each state has authority over its own territory and domestic affairs, free from external interference. Among other things, this means that parties doing business abroad are generally subject to the laws and jurisdiction of the foreign state in which they are doing business.

Modern international arbitration sits squarely within the international rule-of-law architecture. It enables parties to invest and do business across borders while accessing a transnational dispute-resolution mechanism designed to provide a neutral forum. That, in turn, rests on a key choice by states: allowing certain disputes to be resolved in private and agreeing to recognize and enforce arbitral outcomes. Instruments like the UNCITRAL Model Law on International Commercial Arbitration and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) helped make that promise real, and investment treaties extended it further by permitting private actors to bring claims directly against states for breaches of treaty obligations.

But things were once very different. We often date the modern conception of sovereignty to the Peace of Westphalia in 1648, when European powers concluded treaties to end the Thirty Years' War and the Eighty Years' War—conflicts that killed millions across the sixteenth and seventeenth centuries. Those agreements reflected an emerging recognition that nation-states would have exclusive authority over their own territory and domestic affairs. Yet colonialism continued unabated, and the Westphalian concept of sovereignty was, in practice, largely confined to Europe.

During the colonial era, foreign investment and trade were often state-sponsored and state-protected. European powers expanded their reach by taking control of foreign territories; investment followed, backed by the sovereign power of the home state. And even beyond colonialism, the global system was frequently one in which the powerful generally got what they wanted, and international legal rules

1 Adapted from the Opening Keynote Address delivered at the 12th Annual Harvard International Arbitration Conference on March 5, 2026. The author wishes to thank Praharsh Johorey and Isabella Meija Sierra for research assistance.

did little to constrain them. Gunboat diplomacy was rife: if a powerful state wanted something and did not get it, it would often bring a warship to another state's shores to compel compliance.

For example, during the Venezuela Debt Crisis of 1901, Venezuela defaulted on millions of dollars in bonds owed to European nations. After Venezuela ignored a final ultimatum, German, British, and Italian forces seized Venezuelan vessels, bombarded coastal forts, and established a naval blockade in December 1902. Venezuela eventually agreed to assign 30% of the revenues from two key ports to those creditor states.

Similarly, in 1905, after the Dominican Republic defaulted on its debts to the U.S. and Europe, European warships appeared in the Caribbean to apply pressure. The Dominican Republic accepted a U.S.-managed financial arrangement known as the General Customs Receivership. The U.S. took control of Dominican customs houses and allocated 55% of customs revenues to foreign creditors. At a time when customs duties were the government's primary source of revenue, this arrangement effectively placed the country's fiscal lifeline under external control.

It took another war to move the world further away from a power paradigm. After World War I, the creation of the League of Nations began to sketch a sovereignty-based framework that aspired to recognize all states more equally. But the institutions and enforcement mechanisms were not yet strong enough to fully displace the power-based structure.

It was not until after World War II that a truly international legal order emerged—one that both affirmed state sovereignty (for example, through the creation of the United Nations) and, alongside it, built institutions to facilitate international commerce. In a world where one's home state would no longer reliably protect private commercial interests through military or economic force—and where states themselves were less likely to sponsor foreign investment directly—cross-border commerce required a rules-based framework to generate stability and predictability. The establishment of the World Bank, the International Monetary Fund, and the General Agreement on Tariffs and Trade of 1947 (the precursor to the World Trade Organization (WTO), established in 1995), were central to that project. The idea was straightforward: while each state governed its own territory, there would be rules of the road that offered states, individuals, and companies basic legal protections so capital would not be unduly exposed when moving across borders.

International arbitration became one of the major tools that made this international rule-of-law paradigm workable in practice. The 1958 New York Convention enabled parties to resolve disputes through arbitration and then seek recognition and enforcement of awards across jurisdictions. The 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) further facilitated the resolution of disputes between foreign investors and host states through (among other things) its scheme for the enforcement of awards rendered pursuant to ICSID arbitrations. The point, once again, was to reduce reliance on power and coercion in favor of an international rules-based order.

Importantly, many of these initiatives were led by powerful states—the U.S., Europe, China, and Russia among them. In different ways and at different times, they accepted constraints on their own power in order to build a rules-based system, animated by the belief that economic growth could coexist with peace. Even domestic legislation with extraterritorial reach, such as the Foreign Corrupt Practices Act of 1977, reflected an attempt to regulate global commerce by prohibiting U.S. persons and companies from bribing foreign officials to obtain or retain business, backed by severe penalties.

If companies and citizens could access foreign markets relatively openly and fairly—and could rely on baseline legal protections—states would have less need to conquer territory as a means of generating wealth.

III.

WHAT HAS CHANGED?

A game with rules only works if everyone follows the rules. The more players cheat, the less fair the game becomes, and the incentives to keep playing by the rules (or at all) diminish.

For several decades after World War II, most states followed the rules (with some exceptions). Even when coercive power was used—through tariffs, sanctions, or military force—states often felt compelled to justify their actions in legal terms. The invasions of Afghanistan in 2001 and Iraq in 2003 are examples of how force was publicly framed in legal or quasi-legal terms, even where subsequent events cast serious doubt on the asserted predicates.

In recent years, however, several states have retreated from the international legal order. On investment and trade, several states—including India, Indonesia, and Ecuador—have withdrawn from bilateral investment treaties or from the ICSID Convention. Some states that have been found liable for unlawful expropriations have refused to pay adverse awards. Meanwhile, the WTO has lacked a functioning Appellate Body since 2019, after the U.S. blocked new appointments, leaving the WTO largely paralyzed. The actions of superpowers—*e.g.*, Russia, China, and the U.S.—are particularly relevant because they have an outsized effect on which paradigm prevails.

Russia's actions in Ukraine have presented a stark challenge to the sovereignty-based foundations of the post–World War II order. The seizure of Crimea in February 2014 and the full-scale invasion launched in 2022 are widely viewed as clear violations of the principles of territorial integrity and non-intervention. And Russia refuses to pay adverse arbitral awards to creditors like Yukos. Yet Russia has not been held to account in a way that reaffirms the constraining or enforcement power of international law.

China's actions have likewise raised questions about the compliance pull of international rules. China frequently flouts international trade rules—for example, through subsidies and empowering state-owned enterprises. The 2020 Hong Kong National Security Law has been widely said to undermine commitments reflected in the Sino–British Joint Declaration. In 2016, an arbitral tribunal ruled in favor of the Philippines, finding that China's claims to resources in the South China Sea lacked legal basis under the United Nations Convention on the Law of the Sea and that China had infringed on the Philippines' sovereignty. Then–Foreign Minister Wang Yi stated that China would not accept or participate in the arbitration, and Chinese state media described the ruling as "ill-founded" and therefore "null and void".

As the world's largest economy, **the U.S.** has a disproportionate impact on whether the rules-based order prevails. Whereas the U.S. has historically been the flag-bearer for the rule of law, it has, in recent years, begun to question why it should follow the rules when others refuse to. In a world where power prevails, why should the most powerful country be constrained by a rules-based system?

The Trump administration is testing the answers to that question. In February 2025, President Trump reportedly signed an executive order pausing new enforcement actions under the Foreign Corrupt Practices Act, and in June 2025 the Department of Justice reportedly issued guidance narrowing the circumstances in which it would pursue cases to those involving national security, serious criminal activity, or direct harm to U.S. economic interests. On January 7, 2026, the U.S. withdrew from 66 international organizations and agreements. Trade tools, including tariffs, have become instruments of leverage: do a deal or risk losing access to the world's most attractive consumer base.

On January 3, 2026, the U.S. captured the *de facto* President of Venezuela Nicolás Maduro (even though there is little doubt that Maduro did not win a fair election) and his wife, Cilia Flores. Tellingly, President Trump pointed to the expropriation of U.S. oil and gas interests in the early 2000s as part of his justification for the capture. In a nationally-

televised address after the capture, he said:[2]

> "Venezuela unilaterally seized and sold American oil, American assets, and American platforms costing us billions and billions of dollars. They did this a while ago, but we never had a president that did anything about it. They took all of our property. It was our property. We built it. And, … we never had a president that decided to do anything about it."

Shortly thereafter, President Trump announced that the U.S. would run Venezuela until a "safe, proper, and judicious" transition to new leadership could take place, and that U.S. oil companies would move in to take over oil fields.[3]

That sounds like a reversion to gunboat diplomacy.

In parallel, we saw threats aimed at U.S. allies, such as Canada and Denmark/Greenland. In both cases the U.S. expressed the desire for greater influence over those nations, if not control over them. And, most recently, we have seen military operations against Iran aimed at extracting a new nuclear deal (if not more).

Taken together, these examples suggest a return to a more overtly power-centered approach to international relations—one that sits uneasily with the postwar promise that sovereignty and economic relations would both be protected and promoted by law rather than by force.

On January 20, 2026, Canada's Prime Minister, Mark Carney, summarized his view of the evolving world order as follows: "[E]very day we're reminded that we live in an era of great power rivalry, that the rules-based order is fading, that the strong can do what they can, and the weak must suffer what they must … We are in the midst of a rupture, not a transition."[4] It is difficult to disagree.

IV.

WHERE DO WE GO FROM HERE?

Should states accept this new reality and shift their behavior to play the power game? How would the world look in that circumstance?

It would be a world divided into spheres of influence. Sovereignty would become malleable, because powerful states could coerce weaker states to act as they wish using economic or military might. Less powerful countries would be compelled to offer incentives to stronger ones in exchange for military protection and economic security. The result would be a constant struggle for more power, perpetual instability, and the recurring redrawing of lines of control.

A power-based world would also offer far less stability for foreign commerce. Investment and trade would likely retrench into spheres of influence. Without credible legal frameworks, capital either stays home, moves only where it is politically protected, or demands a risk premium that few economies can afford. We already see hints of that dynamic. Sanctions have severely curtailed U.S.–Russia commerce, and U.S. private equity and venture capital investment into China reportedly fell from roughly US$140 billion in 2019 to about US$4 billion in 2023, and to around US$650 million during the first half of 2024.

Even where power is used to try and facilitate investment, private actors will be hesitant without the long-term stability that comes with a rules-based system. For example, when U.S. officials convened oil and gas majors at the White House to discuss post-Maduro investment in Venezuela, Exxon Mobil's CEO Darren Woods stated: "If we look at the legal and commercial constructs—frameworks—in place today in Venezuela, today it's uninvestable.

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2 Senate Democrats, *TRANSCRIPT: President Trump Discusses the Capture of Nicolás Maduro in Venezuela*, 1.03.26 (January 3, 2026), https://www.democrats.senate.gov/newsroom/trump-transcripts/transcript-president-trump-discusses-the-capture-of-nicolas-maduro-in-venezuela-10326.

3 *Id.*

4 World Economic Forum, *Davos 2026*: *Special address by Mark Carney, Prime Minister of Canada* (January 20, 2026), https://www.weforum.org/stories/2026/01/davos-2026-special-address-by-mark-carney-prime-minister-of-canada/.

… [S]ignificant changes have to be made to those commercial frameworks, the legal system, there has to be durable investment protections…"[5]

But the rule of law is not dead. History suggests that once the costs of a power-based system become sufficiently high, the rule of law reasserts itself. Less powerful states recognize that they are better off with rules precisely because rules constrain the coercive power of large states. And powerful states need not risk human life, and expend money and resources, to protect their commercial interests. If the rules are broadly followed, they can create a measure of stability and predictability that supports global economic growth. The arrangement is not perfect: those with power have a greater say in writing the rules. But the rules must be fair enough to maintain incentives for compliance. It is a fragile balance—one that must be carefully choreographed and constantly nurtured.

And when the rule of law resurges, it often returns stronger. We learn from the past, and we adopt laws and establish institutions that better safeguard the rule of law than those that came before. The history I discussed at the outset is demonstrative.

We need to start doing the thinking now as to how the international rule of law can be strengthened when the pendulum swings back. In the international arbitration context, I have three suggestions.

First, we should reassess the critique of investor-state arbitration. In recent years, investor-state dispute settlement has faced sustained criticism—ironically, because it is said to constrain state sovereignty. Critics complain, among other things, that investor claims have a chilling effect on legitimate regulatory activity, such as protecting the environment or human health. In response, investor-state arbitration has been removed from or substantially narrowed in several treaties (*e.g.*, the United States-Mexico-Canada Agreement). Some states have withdrawn from the investor-state regime altogether. But *bona fide* regulation is generally not prohibited by international investment law. Cases such as *Methanex v. United States*, *Philip Morris v. Uruguay*, *Glamis Gold v. United States*, and *Chemtura v. Canada* illustrate that tribunals interpret international standards in ways that preserve a state's legitimate regulatory ability. On the other hand, international investment law protects against unfair treatment, politically motivated decisions that harm investors, and uncompensated expropriations. Those protections are critical to a rules-based order. The empirical question of whether investment treaties increase foreign investment is important, but it is not the only or even the most important metric. It may be enough that the system fosters the peaceful resolution of disputes in accordance with known and accepted rules, in lieu of gunboat diplomacy.

Second, we need to consider how dispute-resolution systems can deliver just outcomes more efficiently. International arbitration is critical because it enables the enforcement of cross-border legal commitments, whether made by private parties in contracts or by states in treaties. But the system only works if it provides meaningful recourse, and meaningful recourse cannot be so lengthy and costly that it becomes unattractive or effectively unavailable. If law is to compete with the speed and simplicity that power can sometimes offer, we have to be innovative and thoughtful about what we want the enforcement of legal commitments to look like in practice. Artificial intelligence will hopefully

5 ExxonMobil, *Our perspective regarding the situation in Venezuela as shared with President Trump* (January 9, 2026), https://corporate.exxonmobil.com/news/news-releases/2026/our-perspective-regarding-the-situation-in-venezuela.

help. But we need to act with urgency—seeking to innovate in each new arbitration we handle—to build a more efficient and effective product.

Third, and finally, we should take seriously our individual responsibility to promote the rule of law and the peaceful resolution of disputes. In 1958, as the world entered the nuclear age and the beginning of the Cold War, President Dwight Eisenhower warned that "if civilization is to survive, it must choose the rule of law."[6] I agree. We can argue vigorously about what the law should be or what it means, but not whether it should apply. On this, we must speak with a united voice.

6 Dwight D. Eisenhower, *Statement by the President on the Observance of Law Day,* (April 30, 1958), https://www.presidency.ucsb.edu/documents/statement-the-president-the-observance-law-day.