

2013

Proceedings of the 106th Annual Meeting of the American Society of International Law: Confronting Complexity

Chiara Giorgetti

University of Richmond, cgiorget@richmond.edu

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>

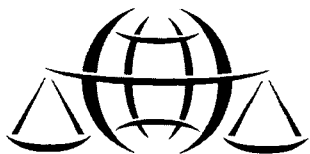


Part of the [International Law Commons](#)

Recommended Citation

Chiara Giorgetti, Harlan Cohen & Cymie Payne, *Proceedings of the 106th Annual Meeting of the American Society of International Law: Confronting Complexity*, 106 ASIL Proc. 1 (2013).

This Conference Proceeding is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

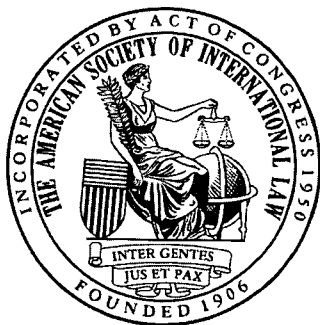


American Society
of International Law

Proceedings
of the **106th**
Annual
Meeting

CONFRONTING

COMPLEXITY



March 28–31, 2012
Washington, DC

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

The Society is a professional association devoted to the study and use of law in international affairs. Membership is open to people of all nations, lawyers and non-lawyers, who are interested in the challenging problems of law and policy. Its large and diverse membership of nearly 4,000, drawn from more than one hundred countries, includes scholars, practitioners, government officials, international civil servants, and students.

Founded in 1906, the Society serves as a meeting place, forum, and collegial research center, hospitable to diverse viewpoints in its meetings, publications, and other activities. Publications include the *American Journal of International Law*, *International Legal Materials*, *Studies in Transnational Legal Policy*, the *ASIL Newsletter*, and reports and books produced by the Society's programs of research, study, and outreach.

The Society is a nonpartisan, tax-exempt, nonprofit corporation headquartered at Tillar House on Sheridan Circle in Washington, DC.

It is the policy of the American Society of International Law not to take an official position, by resolution or otherwise, upon controversial questions. The views expressed in the addresses, remarks, and discussions delivered at the ASIL Annual Meeting and appearing in its printed *Proceedings* are those of the individual speakers and are not to be taken as representing the views of the Society.

Subscriptions and Membership: The electronic version of the *Proceedings of the 106th Annual Meeting* (ISBN 0-9792329-8-5) is available to all members of the American Society of International Law by login to the ASIL website, www.asil.org. Print copies of the *Proceedings* are available to members for an additional fee and to non-members through subscription. Information about membership in ASIL is available online at www.asil.org/membership-become-a-member.cfm. Information about non-member subscriptions is available online at www.asil.org/become-a-subscriber.cfm.

Institutional subscription orders and claims should be directed to the JSTOR Fulfillment Department, JSTOR New York, 2 Rector Street, 18th Floor, New York, NY 10006, USA, Phone: (212) 358-6400, Fax: (212) 358-6499, or support@jstor.org (for JSTOR access questions) or fulfillment@jstor.org (for print claims).

Individual subscription orders and claims should be directed to ASIL Member Services, at services@asil.org, or (202) 939-6001.

Claims for undelivered volumes must be made within six months of the publication date specified online at www.asil.org/claims.htm. *Proceedings* of previous ASIL Annual Meetings are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209-1987, USA, toll-free (800) 828-7571, or online at www.wshein.com.

The *ASIL Proceedings* is available in nonprint forms:

- Online in JSTOR, the database of scholarly journals, either through individual ASIL membership or non-member subscriptions (ASIL Member Services (202) 939-6001), or through institutional subscriptions (JSTOR New York, 2 Rector Street, 18th Floor, New York, NY 10006, USA, Phone: (212) 358-6400, Fax: (212) 358-6499). See www.jstor.org for a current list of institutional subscribers.
- Online in Hein Online, a service of William S. Hein & Co., Inc., at www.heinonline.org; LexisNexis®, part of Reed Elsevier, at www.lexisnexis.com, P.O. Box 933,

Dayton, OH 45401, USA, toll-free (800) 227-9597; and Westlaw®, part of Thomson Reuters, at www.westlaw.com, 610 Opperman Drive, Eagan, MN 55123, USA, toll-free (800) 937-8529.

- On microform from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209, USA, toll-free (800) 828-7571; and National Archive Publishing Company, NA Publishing, Inc., 4750 Venture Drive, Suite 400, P.O. Box 998, Ann Arbor, MI 48106-0998, USA, toll-free (800) 420-6272, or email info@napubco.com.

For **permission to reuse** materials from the *ASIL Proceedings*, please access www.copyright.com, or contact the Copyright Clearance Center, Inc. (CCC), 222 Rosewood Drive, Danvers, MA 01923, USA, (978) 750-8400. CCC is a not-for-profit organization that provides licenses and registration for a variety of users.

PROPER CITATION

The *Proceedings* should be cited according to the following example:
106 ASIL PROC. 214 (2013).

© 2013 The American Society of International Law

AN INTRODUCTION: CONFRONTING COMPLEXITY

By Harlan Cohen, Chiara Giorgetti,† and Cymie Payne‡*

In March 2012, a record number of international lawyers assembled in Washington, DC for the 106th Annual Meeting of the American Society of International Law.

We had the privilege of co-chairing the Meeting and chose as our theme, “Confronting Complexity.” We felt that this theme reflected well the current challenges and opportunities presented by rapidly evolving technologies, increasing global interconnectedness, rising population, and deepening understanding of science and the environment. New international actors; changes in social, economic, and political dynamics; a multipolar power structure; and novel security threats only add to the complexity we face.

Amid this confusion, international law can be a source of order and clarity. It can provide frameworks to resolve disputes peacefully, regulate relations between different actors, and clarify rights and obligations. It can foster technological development and facilitate exchanges of knowledge and goods. It is no surprise that managing global financial crises, protecting global commons, responding to conflicts spilling across borders, and guaranteeing public health and safety have all been added to international law’s purview. In our crowded, connected world, civil uprisings, financial collapses, natural and human-caused disasters are no longer domestic crises: they are global crises.

While international law has at times been quite creative in response to these problems, whether it is fully up to the task remains an open question. International law can actually exacerbate complexity with conflicting or unclear rules, uncertain enforcement, and overlapping and competing jurisdiction. International law must demonstrate the flexibility to embrace new issues, to look beyond the state, and to integrate new players (who may not follow its rules). Transparency, accountability, and participation must be guaranteed in new private regulatory regimes, shorn from state control. The instruments and processes of international law must provide means for scientific evidence to be sifted, understood, and translated into law. And yet, even as it adapts, international law must also remain a force for stability and predictability.

As we looked at various issues that seemed to be defining the moment in international law, whether the Arab Spring, the global financial crisis, disasters, or drone warfare, we kept coming back to this theme of complexity. These issues seemed staggeringly complex, not just for the range of laws and regimes they implicate, but for the masses of information that need to be processed to figure out how to deal with them. More and more, it seemed that the real challenge was understanding how to grasp and manage this increasing complexity. The questions we wanted to address at the Annual Meeting were not only how international law might help do this, but also whether international law is always the best tool to do so. We sought to explore when and how international law can best be mobilized and when and how it might either partner with or even cede the field to others. These questions were prominent in the panels, roundtables, and talks scheduled for the Annual Meeting.

We sought to tackle the problem of complexity in a number of different ways.

First, some sessions featured particularly complex problems, for example, roundtables or panels on “International Humanitarian Law and New Technology,” “Cybersecurity,” “What

* Associate Professor of Law, University of Georgia School of Law.

† Assistant Professor of Law, University of Richmond School of Law.

‡ Assistant Professor, Rutgers University.

Makes a State,” “International Energy Governance,” “An Emerging International Law of Migration,” “Financial Crisis in the Eurozone,” “The Emergence of a Human Right to Water and Sanitation,” “The Emerging System of International Arbitration,” “Chevron/Ecuador Dispute: A Paradigm of Complexity,” and “Transitional Justice and the Arab Spring.”

Second, other sessions focused on attempts to manage or cut through the complexity, including panels on “Indicators in International Law,” “Fact-Finding in Interstate Disputes,” “Courts, Commissions, and the Complexity of Claims Against States,” and “Global Environmental Protection and Transnational Conservation Contracts.” A closing plenary featured a conversation with UN Special Rapporteur James Anaya and Inter-American Commission Rapporteur Dinah Shelton on their work promoting the rights of indigenous peoples.

Third, still other panels challenged international law’s role in wrestling with complex problems, for example, “Opting Against International Law in International Financial Regulation,” or challenged the assumption that complexity is always a problem to resolve. One panel, “International Law and Its Discontents: The Normative Implications and Strategic Opportunities of Complexity,” suggested that legal complexity may open up opportunities for previously marginalized voices.

In keeping with the overall theme, other highlights of the program included:

- the 2012 Grotius Lecture delivered by Jakob Kellenberger, President of the International Committee of the Red Cross, entitled “Confronting Complexity Through Law: The Case for Reason, Vision, and Humanity.”
- the 2012 Women in International Law Interest Group Luncheon “Internationalization of Law: Diversity, Perplexity, Complexity” with Honoree and Speaker Mireille Delmas-Marty, Chair of Comparative Legal Studies and Internationalisation of Law at the Collège de France, with opening remarks by Stephen G. Breyer, Associate Justice of the U.S. Supreme Court.
- the Manley O. Hudson Medal Lecture: “International Law as Discipline and Profession” by James R. Crawford, Whewell Professor of International Law at Jesus College, Cambridge University.
- a plenary panel on “Confronting Complexity in the Hague: The View from the Courts and Tribunals” featuring presidents of international tribunals based in The Hague and the Secretary-General of the Permanent Court of Arbitration.
- Asma Jahangir, AGHS Legal Aid Cell, 2012 Butcher Medal Winner, on “Challenges to the Rule of Law During Democratic Transitions.”

ASIL IDEAS talks were the newest feature of the Annual Meeting. These shorter talks, about 20 minutes long, highlighted exciting and inspiring new ideas or projects, often developed outside of international law. The selected speakers were Rebecca MacKinnon, former CNN Bureau Chief in Beijing, who discussed “Consent of the Networked: The Worldwide Struggle for Internet Freedom”; Ted Parson, renowned professor of public policy, who spoke on the potential of climate engineering; and representatives of the Israeli and Palestinian International Chambers of Commerce, who spoke about their innovative joint effort, the Jerusalem Arbitration Center.

In keeping with the theme, we also thought it was important to bring in voices from outside the law. The roundtable on “International Humanitarian Law and New Technology” included Brookings’ P.W. Singer and University of Pennsylvania philosopher Claire Finklestein; a

panel on “Preparation of Cases Before International Courts and Tribunals” included geographer Martin Pratt; “Financial Crisis in the Eurozone” included journalist Stephen Richter; and “Jus Post Bellum in the Age of Terrorism” included Afghan expert Michael Semple.

These *Proceedings* record presentations given at the Annual Meeting and demonstrate once again the breadth of our field.