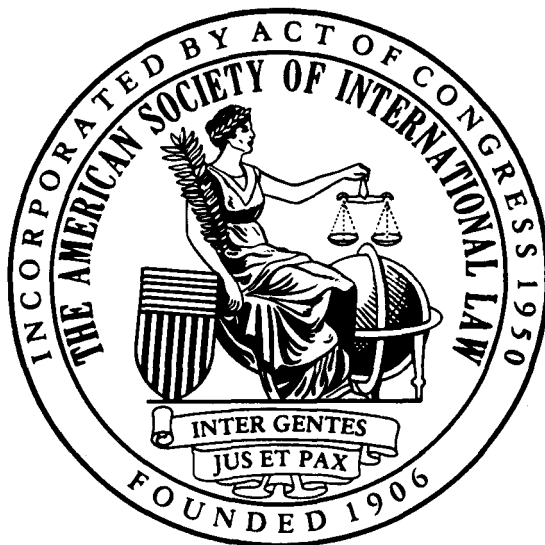


THE AMERICAN SOCIETY OF INTERNATIONAL LAW

PROCEEDINGS OF THE 87TH ANNUAL MEETING



WASHINGTON, D.C.
MARCH 31–APRIL 3, 1993

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Founded in 1906, the Society serves as a meeting place, forum and collegial research center, hospitable to all 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 its programs of research, study and outreach.

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INTRODUCTION

Dropping the traditional chronological presentation of panel discussions, this year's volume of the *Proceedings* is ordered according to four "crosscutting themes" that were built into the program of the 1993 Annual Meeting with the intention of providing a more coherent organization for the discussion, within the overall theme of "Challenges to International Governance." They are:

- I. Our Changing Sense of Community: The International Legal System Following the Bipolar World
- II. Communities in Transition: Autonomy, Self-Governance and Independence
- III. International Regimes: Progress and Problems
- IV. The Internationalization of Domestic Law: The Shrinking *Domaine Réservé*

Readers will judge for themselves how successfully the underlying intention of this approach was fulfilled, both in the final design of the scheme and in its execution. Most of the discussion was indeed related in interesting and important ways to the myriad contemporary "challenges to international governance" and their implications for the ongoing roles of policymakers, scholars and legal practitioners. At the same time, expectably, in the end not all panels fit equally well the subthemes under which they had been subsumed, nor did the content of actual discussions in individual panels fit equally well the topics they were to address. My own judgment is that the extent of success of the approach was more than ample to justify the organizers' thoughtful effort, and that they are to be commended on the outcome.

If there are no dominant issues running as unbroken threads through all discussion even within each of the four major subthemes, one can discern some recurring issues that emerge repeatedly in various subthemes. Most notable, perhaps, is the question of the impact of contemporary challenges on the concept of the state, of state sovereignty and of a reserved domain of national competence. From some of the propositions advanced on this question, taken in isolation, one might get the impression that the state itself is at risk of imminent disappearance, to be replaced by some fundamentally different global system of governance in which perhaps international organizations will substitute for states; that even in a formal sense sovereignty is fading fast or succumbing to an irreversible porosity; and that the scope of domestic jurisdiction is perceptibly shrinking toward some eventual vanishing point. In the free exchanges of the intellectual marketplace, however, such hyperbole—sometimes indeed put forward with the intention of provoking—tends to be self-corrective, in the author's own further elaboration, or in the retorts it elicits from other participants.

What emerges is a realization that, if anything is disappearing on any relevantly short schedule it is not The State, but a few individual states, as evidenced by the fact that the only recent examples of outright disappearance (Yugoslavia and the USSR) have been replaced by collections of fully-fledged lesser states. Moreover, efforts to persuade individual states to agree to relinquish greater portions of their political and/or economic prerogatives in favor of overarching integrative institutions—the European Community of course being the most longstanding and ambitious such effort—continue to run athwart vigorous interest by states in preserving their own sovereign discretion on various key matters. Nor are efforts to "disappear" particular states involuntarily faring well, as in the invasion of the state of Kuwait and the long-abandoned effort to do away with the state of Israel.

This judgment, however, must await the eventual outcome of the apparent failure of collective will in the tragic case of Bosnia, which may cast a longer and darker shadow than any would care to contemplate. In any event, speculation about the eventual implications of the welter of contemporary processes and competing tendencies such as these on the fundamental political structure of global society is a risky, if important, venture.

If there is no immediate threat to the continued existence of an ample supply of sovereign states, still possessing their full collection of basic legal prerogatives, the discussions reaffirm equally clearly that the power of all states *in fact* to control their own affairs by themselves, and to resist pressures toward all sorts of interactions with their fellows, has been and continues to be under ever stronger challenge. The most benign and progressive forms of this interaction are cooperative consensual arrangements by which those prerogatives are voluntarily limited, which by now have multiplied to touch upon almost every facet of national policy. This is hardly a new phenomenon, but it is fair to say that, particularly under the stimulus of events associated with the demise of the Cold War, the pace of the real change that these challenges engender is accelerating.

In some areas this change entails formal limitation of the reserved domain of national jurisdiction by the expansion of general international law or widely subscribed multilateral treaties—most strikingly perhaps in the fields of human rights, economic process and environmental protection. At the same time, it cannot be assumed that every integrative change deliberately worked out among states in trying to cope with the social, political or economic realities of interdependence is or should be achieved through the intrusion of international legal rules and principles into the sovereign domain. Whether to seek to negotiate a treaty—particularly a broadly applicable multilateral treaty—or a declaration aimed at establishing “soft law,” usually turns out to be a complex matter of practical choice, as the discussion in at least one panel at the 1993 annual meeting explicitly indicated. (See the Theme III panel, “Environmental Law: When Does it Make Sense to Negotiate International Environmental Agreements?” (p. 377).)

All in all, I believe the reader will find the thoughtful exchanges in these *Proceedings* a source of much valuable information and insight. For their indispensable roles in the production of the volume, Assistant Editor Susan Bassuener and I, on the Society’s behalf, extend special thanks to the organizers of the 1993 Annual Meeting, to the 128 Panelists and many other panel participants, to the 28 Reporters, to Patricia A. Allen, who proofread the pages, and to Grant McClanahan, who again prepared the Index.

John Lawrence Hargrove
Senior Director of Studies
 October 1993

PROCEEDINGS OF THE EIGHTY-SEVENTH ANNUAL MEETING
OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

CHALLENGES TO INTERNATIONAL GOVERNANCE

CO-CHAIRS OF THE COMMITTEE
ON THE ANNUAL MEETING
Jonathan I. Charney
Judith H. Bello

EDITOR OF THE PROCEEDINGS
John Lawrence Hargrove
ASSISTANT EDITOR
Susan F. Bassuener

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