

## AN INTRODUCTION: CONFRONTING COMPLEXITY

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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

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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.