

FOREWORD

INTERNATIONAL LAW AS AN INSTRUMENT

This year's Annual Meeting theme, "International Law as an Instrument," invited the conferees to reflect on the myriad ways in which actors on the global stage use international law as an instrument for advancing their interests, resolving disputes, and addressing global challenges.

The Annual Meeting Committee provided the following description:

The 2019 Annual Meeting of the American Society of International Law (ASIL) will focus on the distinctive ways international law serves as an instrument that national and international actors invoke and deploy, and by which they are constrained. How does international law shape the perceptions of the interests and problems of diverse global actors and help frame solutions? Is international legal language a useful medium for the development and dissemination of globalized norms? Under what conditions is international law most effective? Are international institutions effective instruments for addressing complex global challenges?

The theme prompted a variety of responses and interpretations. In his Grotius Lecture, Professor Koskenniemi, posed the question, "If international law is a tool, *what is it a tool for?*" Indeed, one might ask, among other things, to what extent international law enables states and other actors to advance their interests, and to what extent it deters and constrains them from doing so? Do such actors actually consider international law in deciding whether to undertake a given course of action? Or do they merely invoke international law to justify their actions after the fact?

Such questions carry special relevance today, as actions by leaders in the United States and other countries have brought into question whether the rule-based legal order continues to serve as an effective source of normative constraints.

The various dimensions of the theme played out over the course of four plenary sessions and some fifty substantive panels and speeches. The conference opened on Wednesday with the 21st annual Grotius Lecture—presented, as always, in cooperation with ASIL Academic Partner American University Washington College of Law. As noted above, the lecture was delivered by Martti Koskenniemi of the University of Helsinki. His remarks, "Enchanted by the Tools? An Enlightenment Perspective" provided a rich and provocative exploration of the Annual Meeting theme, exploring the use and efficacy of international law through history. The Distinguished Discussant, Anne Orford, of the University of Melbourne, offered an engaging and learned response.

On Thursday evening, the Society held its fourth annual Assembly, featuring the presentation of honors and awards, memorial tributes, and the election of new members of the Executive Council. Highlights of the Assembly included the presentation of the Goler T. Butcher Medal to Zeid Ra'ad Al Hussein, the former UN High Commissioner for Human Rights, and the presentation of the first David D. Caron Prize, awarded for the best paper presented at the fall Research Forum. The Assembly Address, "International Law as an Instrument: Dialogues, Tensions, Accomplishments," was delivered by the recipient of the Society's Honorary Member Award, Professor Mónica Pinto of the University of Buenos Aires Faculty of Law.

The Friday evening program featured keynote remarks on the future of international criminal justice by Judge Chile Eboe-Osuji, President of the International Criminal Court. The keynote program was followed by a special screening of the documentary "Prosecuting Evil: The

Extraordinary World of Ben Ferencz.” The screening was preceded by a discussion with Ben Ferencz himself and the film’s producer, Barry Avrich.

The Manley O. Hudson Medal Luncheon featured a conversation between the medal recipient, Associate Justice Stephen Breyer of the U.S. Supreme Court, and Jennifer Newstead, the Legal Adviser of the U.S. Department of State. The Women in International Law Interest Group (WILIG) Luncheon featured keynote remarks by the winner of the 2019 Prominent Woman in International Law Award, Tracy Robinson of the University of the West Indies Faculty of Law.

Other programs of note included the seventh annual Charles N. Brower Lecture on International Dispute Resolution, delivered by Judge Peter Tomka of the International Court of Justice, and the fourth annual Detlev F. Vagts Roundtable on Transnational Law, featuring a discussion of “Corporate Liability and Human Rights.”

The many concurrent panels included sessions on “Obligations to Negotiate and Consult: Worthwhile Tool or Exercise in Futility?”; “Senate v. President: A Moot Court on Treaty Withdrawal Powers”; a debate on “Designing the Investor-State Dispute Resolution System from Scratch”; “International Law as a Counterweight to Power Asymmetries in International Politics”; “Regional Human Rights Bodies as Instruments of International Law”; “Emerging Technologies as a Source of Increased International Humanitarian Law Compliance and Enforcement”; “UNCLOS: A Tool for Peace and Stability?”; “The Last Drop: Practical Tools for Addressing Transborder Water Crises”; and “The Innovative Structural Features of the Paris Agreement.”

Two sessions were organized under the auspices of the Society’s “Signature Topics” initiative: “International Law as an Instrument to Regulate the Behavior of Non-state Actors in Areas Beyond National Jurisdiction”; and “Preventing Violence and Atrocities Through International Disarmament Law.” The program also featured a pair of “late breaking” sessions addressing current challenges to the international order—“BREXIT and International Law” and the “Crisis in Venezuela.”

The conference concluded on Saturday morning with a plenary session on “International Law as an Instrument for Development.” Sponsored by the City of The Hague, the Asser Institute for International and European Law, and the Embassy of the Netherlands, this high-level discussion examined the effectiveness and utility of international law as a means of promoting sustainable economic and social development.

Finally, we were pleased to host a special photo exhibit created by the Codification Division of the UN Office of Legal Affairs, to commemorate the 70th session of the International Law Commission (ILC). The exhibit traced the progressive development of international law over the past two centuries, with a particular focus on the contributions of the ILC.

The success of the meeting was due to the creativity, hard work, and commitment of many people, including President Sean D. Murphy, Annual Meeting Co-Chairs Rebecca Ingber, Neha Jain, and Rahim Moloo, and the dedicated members of the Annual Meeting Committee. Particular thanks are due to Deputy Executive Director Wes Rist; Director of Publications and Research, Caitlin Behles; the editor of these *Proceedings*, Erin Lovall; our meeting planner, Eden Capuano, and her team at Voila! Inc.; our sponsors and partner organizations; and all the members of the Society’s extraordinary staff.

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Executive Director
December 2019
Washington, DC