



American Society
of International Law

Proceedings
of the **110th**
CHARTING
NEW
FRONTIERS IN
INTERNATIONAL
LAW **Annual**
Meeting



March 30–April 2, 2016
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 110th Annual Meeting* is available to all members of the American Society of International Law by logging in 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/membership. Information about non-member subscriptions is available online at www.asil.org/proceedings.

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:
110 ASIL PROC. 214 (2017).

© 2017 The American Society of International Law

**PROCEEDINGS OF THE ONE HUNDRED TENTH ANNUAL MEETING
OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW**

CHAIRS OF THE COMMITTEE
OF THE ANNUAL MEETING
Tendayi Achiume
Dawn Yamane Hewetta
Ina C. Popova

CO-EDITORS OF THE PROCEEDINGS
Tendayi Achiume
Dawn Yamane Hewetta
Ina C. Popova

CONTENTS

<i>Foreword</i>	xiii
An Introduction: Charting New Frontiers in International Law <i>Tendayi Achiume, Dawn Yamane Hewett, Ina Popova</i>	1
Eighteenth Annual Grotius Lecture	
The Challenges to International Law in the 21st Century <i>Michelle Bachelet Jeria</i>	3
Challenges and New Frontiers: National Courts as the Frontline of International Law <i>Judge M. Margaret McKeown</i>	11
The Iran Nuclear Deal as a New Model for International Lawmaking	
Opposition to the Iran Nuclear Agreement <i>David S. Jonas</i>	19
New Frontiers in LGBTI Rights	
Sexual Orientation and Gender Identity Under International Law <i>Mark E. Wojcik</i>	21
Developments on LGBTI Rights at the United Nations <i>Melanie Bejzyk</i>	25
Achieving Consensus in Climate Change	
Introductory Remarks by: <i>Hari Osofsky</i>	31
Remarks by: <i>Daniel Bodansky</i>	32
<i>Lisa Benjamin</i>	33
<i>Susan Biniaz</i>	33
<i>Yamide Dagnet</i>	34
Forum Nonconcurrence: The Resolution of Investment Treaty Disputes	
Introductory Remarks by: <i>Jarrold Wong</i>	51
International Investment Agreement Practice and The Trans-Pacific Partnership <i>Karin L. Kizer</i>	51
CETA and TTIP: A New ‘Platinum’ Standard for ISDS? <i>Ko-Yung Tung</i>	54
A Testimony from the Global South <i>Fabio Morosini</i>	59

Theorizing Transnational Legal Orders	
Introduction and Context by:	
<i>Gregory Shaffer</i>	63
The Theory of Transnational Legal Orders	
<i>Terence C. Halliday</i>	64
Framing and Transnational Legal Organization: The Case of Human Trafficking	
<i>Paulette Lloyd</i>	68
TLOs and Global Financial Markets: The Case of Derivatives	
<i>Hannah L. Buxbaum</i>	71
Constitution Making as a Transnational Legal Order	
<i>Tom Ginsburg</i>	74
The Emergence of Cyber Deterrence: Implications for International Law	
Introductory Remarks by:	
<i>Kathleen A. Doty</i>	77
Remarks by:	
<i>Jonathan E. Davis</i>	78
<i>Gary Brown</i>	81
Africa's New Economic Partnerships and Dispute Settlement	
Remarks by:	
<i>David H. Shinn</i>	85
The Dispute Settlement Aspects of Africa's New Economic Partnerships	
<i>Thomas R. Snider</i>	86
Third-Party Funding in Dispute Settlement in Africa	
<i>Victoria Sahani</i>	90
The Role of International Law Societies in Charting New Frontiers in International Law	
Remarks by:	
<i>María Teresa Infante</i>	93
Protecting Endangered Cultural Heritage in Syria and Iraq: The Role of International Organizations and Governments	
Remarks by:	
<i>Roger O'Keefe</i>	97
<i>Corine Wegener</i>	98
<i>Michael Danti</i>	100
<i>Patty Gerstenblith</i>	103
<i>Haider Ala Hamoudi</i>	105
U.S. and International Perspectives on the New U.S. Department of Defense Law of War Manual	
Remarks by:	
<i>Karl Chang</i>	115
<i>David Glazier</i>	117
Expanding Bullets	
<i>Juliet Bartlett</i>	118
Economizing Justice in Times of Debt and Austerity	
Introductory Remarks by:	
<i>Margot E. Salomon</i>	121
Connecting Sovereign Debt to Questions of Justice	
<i>Odette Lienau</i>	123

The Democratic Deficit	
<i>George Katrougalos</i>	126
Human Rights Law: How Has it Been Relevant to Austerity and Debt Crises?	
<i>Aldo Caliari</i>	129
Energy on the Move: Treaties on Transit of Energy via Pipelines	
Transit of Energy via Pipelines in International Law	
<i>Danae Azaria</i>	131
Fourth Annual Charles N. Brower Lecture on International Dispute Resolution: Accountability in International Investment Arbitration	
Opening Remarks by:	
<i>Lori Fisler Damrosch</i>	141
<i>Abby Cohen Smutny</i>	141
<i>Charles Brower</i>	141
Featured Speaker:	
<i>Gabrielle Kaufmann-Kohler</i>	142
Conflict, Accountability, and Justice (New Voices)	
Introductory Remarks by:	
<i>Beth Van Schaack</i>	151
Context at the International Criminal Court	
<i>Hassan Ahmad</i>	151
Adjudicating the State's Role in International Crime	
<i>Rebecca Hamilton</i>	156
The Dark Side of Legal Truth	
<i>Shiri Krebs</i>	160
Migrants at Sea: What Role for International Law?	
Refugees and Migrants at Sea: A View from the Middle East and North Africa Region	
<i>Chiara Cardoletti-Carroll</i>	165
When Migrants Make Perilous Sea Crossings: The Causal Role of International Law	
<i>Ralph Wilde</i>	166
Refugees and Migrants at Sea: Another View from the Middle East and North Africa Region	
<i>Melissa Phillips</i>	169
A Crisis of Protection in Europe: Migrants at Sea	
<i>Siobhán Mullally</i>	173
Migration/Refugee Crisis: A Challenge of Historic Proportions for Europe	
<i>Maria Theodorou</i>	178
Assembly Keynote Address	
Keynote Address	
<i>Stephen Breyer</i>	183
Mock Debate: Is the Primacy of the International Court of Justice in International Dispute Settlement Under Threat?	
Report by:	
<i>Chester Brown</i> :	191

Conceptualizing International Migration Law	
Remarks by:	
<i>Vincent Chetail</i>	201
<i>Chantal Thomas</i>	204
Reexamining International Law at the International, Regional, and State Levels	
(New Voices)	
Unilateral and Multilateral Sanctions in Investment Treaty Arbitration	
<i>Jessica Beess und Chrostin</i>	207
The Judicial Construction of Gaps at the International Court of Justice	
<i>Yang Liu</i>	209
Institutionalizing State Responsibility: Global Security and UN Organs	
<i>Vincent-Joël Proulx</i>	212
Refugee Detention as a Violation of International Law	
<i>Shana Tabak</i>	215
International Law Beyond the Nation State? From People Power to ISIL/Daesh	
Remarks by:	
<i>Scott W. Lyons</i>	219
<i>Steven Feldstein</i>	221
<i>Anicée Van Engeland</i>	225
Perpetual Transition in the ‘‘Move Beyond the State’’	
<i>Boris N. Mamlyuk</i>	228
WILIG Luncheon: 25 Years Later: A Discussion of ‘‘Feminist Approaches to International Law’’	
Introductory Remarks by:	
<i>Lori Fisler Damrosch</i>	231
Remarks by:	
<i>Christie Edwards</i>	233
<i>Tracy Roosevelt</i>	233
<i>Honoree, Elizabeth Andersen</i>	235
<i>Catherine Powell</i>	237
<i>Aisling Swaine</i>	238
Arbitrating The Public Interest	
Introductory Remarks by:	
<i>Rumiana Yotova</i>	247
The Public Interest and Recent Treaties	
<i>Marc Lalonde</i>	248
The Investment Treaty Regime’s Maturation and Growth	
<i>N. Jansen Calamita</i>	252
Comparative Perspectives on the Judicialization of Foreign Affairs:	
Adjudication of Military Deployments in National Courts	
Introductory Remarks by:	
<i>Katja S. Ziegler</i>	257
A United States Perspective	
<i>Thomas E. Ayres</i>	258
A UK Perspective	
<i>Douglas Wilson</i>	265
A Perspective from France	
<i>Claire Landais</i>	269

Great Expectations? The Rise of Regional Development Banks in a DC-Centered World	
Introductory Remarks by:	
<i>Diane A. Desierto</i>	273
The World Bank and Regional Development Banks	
<i>Vikram Raghavan</i>	273
Optimism, Skepticism, and Pragmatism: The Clashing Narratives on the Rise of New Actors in International Development Finance	
<i>Caio de Souza Borges</i>	277
Remarks by:	
<i>Cecilia Akintomide</i>	282
A Critical Assessment of Reparation in International Law	
Remarks by:	
<i>Judge Heikki Kanninen</i>	285
Reparation in Investment Treaty Arbitration	
<i>Andrés Jana</i>	288
Critical Assessment of Reparation in International Environmental Law	
<i>Makane Moïse Mbengue</i>	293
Keynote Address: International Law, Legal Diplomacy and the Counter-ISIL Campaign	
Introductory Remarks by:	
<i>Lori Fisler Damrosch</i>	299
Keynote Address	
<i>Brian Egan</i>	300
Domestic Implementation of International Treaties: The Next New Challenge for Private International Law?	
Introductory Remarks by:	
<i>S.I. Strong</i>	309
The Next New Challenge for Private International Law?	
The Intergovernmental Perspective	
<i>Jeannette Tramhel</i>	311
Inaugural Detlev F. Vagts Roundtable on Transnational Law: Transnational Professional Ethics	
Introductory Remarks by:	
<i>Lori Fisler Damrosch</i>	317
<i>Karen Vagts</i>	319
<i>Catherine Rogers</i>	320
Ethical Dilemmas in Interstate Disputes	
<i>Christina Parajon Skinner</i>	321
Remarks by:	
<i>Catherine Amirfar</i>	323
International Courts and Tribunals as Regulators of Counsel Conduct	
<i>Stephan W. Schill</i>	326
Fraudulent Evidence at the International Court of Justice	
<i>Cecily Rose</i>	329
Summary by:	
<i>Douglas Cantwell</i>	332
Hypothetical	334

**Steering Africa’s Blue Economy: The Role of International Law and Lessons
for Other Maritime Regions**

Remarks by:

<i>Tafadzwa Pasipanodya</i>	337
<i>Vincent Nmehielle</i>	338
<i>Nilufer Oral</i>	339
<i>John Virdin</i>	341
<i>James Kraska</i>	342

**Closing Plenary: Countering Violent Extremism: Understanding the Shifting
Landscape in National and International Approaches**

Keynote Address

<i>Ernst M.H. Hirsch Ballin</i>	347
---------------------------------------	-----

Remarks by:

<i>Jean-Paul Laborde</i>	350
--------------------------------	-----

Summary of Remarks by:

<i>Abiodun Williams</i>	353
<i>Michèle Coninx</i>	354

<i>110th Annual Meeting Theme Statement and Program</i>	357
---	-----

<i>Fifty-Seventh Annual Philip C. Jessup International Law Moot Court Competition</i>	387
---	-----

Appendices

Minutes of the ASIL Annual General Meeting	393
Memorial Notices	395
ASIL Officers and Executive Council	399
American Journal of International Law	401
International Legal Materials	403

<i>Index</i>	405
--------------------	-----