

ASIL

The American Society of International Law

Proceedings
of the 92nd
Annual
Meeting

THE
CHALLENGE
OF
NON-STATE
ACTORS

April 1-4, 1998
Washington, D.C.



ASIL

The American Society of International Law

**Proceedings
of the 92nd
Annual
Meeting**

**THE
CHALLENGE
OF
NON-STATE
ACTORS**

**April 1-4, 1998
Washington, D.C.**

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 nonlawyers, who are interested in the challenging problems of law and policy. Its large and diverse membership of some 4,400, 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 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.

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

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 its 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.

Subscription Information

ASIL members and nonmembers may order the *Proceedings of the 92nd Annual Meeting* for \$75; or \$95 for delivery outside the United States. To place an order or to receive information on back issues, please contact The American Society of International Law, 2223 Massachusetts Avenue, NW, Washington, D.C. 20008-2864; telephone (202) 939-6000, fax (202) 797-7133.

Authorization to photocopy items for internal or personal use (beyond that permitted by Section 107 and 108 of the U.S. Copyright Law), or for the internal or personal use of specific clients, is granted by The American Society of International Law for users registered with the Copyright Clearance Center (CCC) Transactional Reporting Service, provided that the base fee of \$5.00 per copy, plus \$0.25 per page, is paid directly to CCC, 222 Rosewood Drive, Danvers, Mass. 01923. For organizations that have been granted a photocopy license by CCC, a separate system of payment has been arranged. The fee code for users of the Transactional Reporting Service is: 0272-5037/98, \$5.00 + 0.25. Educational copying is permitted. Please address requests to CCC Academic Permissions Service; telephone (508) 750-8400, fax (508) 750-4744.

Proper Citation

The Proceedings should be cited according to following example:
92 ASIL PROC. 214 (1998).

© 1998 The American Society of International Law

PROCEEDINGS OF THE NINETY-SECOND ANNUAL MEETING OF THE
AMERICAN SOCIETY OF INTERNATIONAL LAW

THE CHALLENGE OF NON-STATE ACTORS

CO-CHAIRS OF THE ANNUAL
MEETING COMMITTEE
Dorinda G. Dallmeyer
David Wippman

EDITOR OF THE PROCEEDINGS
John Lawrence Hargrove
ASSISTANT EDITOR
Renee S. Brown

CONTENTS

<i>Note about the Proceedings</i>	viii	
<i>Introduction</i>	ix	
The Genocide Convention after Fifty Years: Contemporary Strategies for Combating a Crime against Humanity		
<i>The Genocide Convention after Fifty Years.</i>		
Steven R. Ratner	1	
REMARKS BY:		
B.G. Ramcharan	3	
Steven Ratner	6	
Payam Akhavan	7	
Delissa Ridgway	13	
Plenary Theme Panel: The Challenge of Non-State Actors		
REMARKS BY:		
Anne-Marie Slaughter	20	
DISCUSSION	21	
Contemporary Conceptions of Customary International Law		
REMARKS BY:		
Stephen J. Toope	37	
Harold Hongju Koh	37	
<i>Customary International Law.</i>		
S. James Anaya	41	
<i>The Unbearable Lightness of Customary International Law.</i>		
Hilary Charlesworth	44	
Non-State Actors and the Case Law of the Yugoslavia War Crimes Tribunal		48
Standards and Norms in International Law		
<i>Notes toward a Theory of Customary International Law.</i>		
Jack L. Goldsmith & Eric A. Posner	53	
<i>The Many Faces of International Legalization.</i>		
Kenneth W. Abbott	57	
The East Asian Debate on International Human Rights: Domestic Approaches and Attitudes in the Absence of Regional Commitments		64

ASIL/ACUNS Summer Workshop Alumni Panel on Political and Legal Space

REMARKS BY:

Julie Mertus	67
Barbara Stark	67
Robin L. Teske	68
Mary Ann Tétreault	69

COMMENTARY BY:

Barbara Welling Hall	70
----------------------------	----

Private Interests, Human Rights and the Formulation of U.S. Foreign Policy*Sanctions and Iranian Aggression.*

Gregg Rickman	71
---------------------	----

WTO Dispute Settlement: Three Years in Review*The Future of WTO Dispute Settlement.*

Andrew W. Shoyer	75
------------------------	----

WTO Dispute Settlement: Emerging Practice and Procedure.

Debra P. Steger and Peter Van den Bossche	79
---	----

The WTO Dispute Settlement System: New Horizons.

Thomas Cottier	86
----------------------	----

Multiple Visions of International Law's Future

REMARKS BY:

Enrique Carrasco	92
------------------------	----

Organic Constitutions.

Ruth Gordon	93
-------------------	----

Indigenous Peoples and International Law Issues.

S. James Anaya	96
----------------------	----

International Law Moves in a Cross-Discipline Register.

Sharon K. Hom	99
---------------------	----

International Law: The Year in Review 107**A Breakfast to Celebrate Professor Stefan Riesenfeld's 90th Birthday**

CERTIFICATE OF APPRECIATION	115
-----------------------------------	-----

Separatism and the Democratic Entitlement*Separatism and the Democratic Entitlement in International Law.*

M.N.S. Sellers	116
----------------------	-----

The Constitutionalization of Self-Determination.

Deborah Z. Cass	122
-----------------------	-----

Two Mistakes about Democracy.

Fernando R. Tesón	126
-------------------------	-----

Separatism and the Democratic Entitlement.

Diane F. Orentlicher	131
----------------------------	-----

Legal Authority for the Possible Use of Force against Iraq

CHAIR: Michael Glennon	136
------------------------------	-----

PARTICIPANTS:

Paul Szasz	136
Thomas M. Franck	137
Michael Matheson	137

New Players to Combat Transnational Bribery

<i>Transnational Corruption: New Rules for Old Temptations, New Players to Combat a Perennial Evil.</i>	
Lucinda A. Low	151
<i>The Inter-American Convention Against Corruption.</i>	
Luis F. Jiménez	157
<i>U.S. Efforts to Combat Foreign Corrupt Practices.</i>	
Thomas J. White	162
<i>The Contribution of the Civil Society/NGO Sector.</i>	
Nancy Zucker Boswell	165

International Security: Multiple Actors, Multiple Threats

<i>Countering the Threat Posed by Non-State Actors in the Proliferation of Weapons of Mass Destruction.</i>	
Jack Beard	173
<i>The Changing Environment for Forcible Responses to Nontraditional Threats.</i>	
Marc Weller	177

The Future of the Inter-American System for the Promotion and Protection of Human Rights

<i>Strengthening the Inter-American Human Rights System: The Current Debate.</i>	
Claudio Grossman	186
<i>Thoughts on Recent Developments in the Case-Law of the Inter-American Court of Human Rights: Selected Aspects.</i>	
Antônio Augusto Cançado Trindade	192
<i>Remedies in the Inter-American System.</i>	
Dinah Shelton	202

The European Union and the World Trade Organisation

REMARKS BY:	
Hugo Paemen	207
Jeffrey M. Lang	209
<i>Mechanisms for the Negotiation of International Trade Claims by Public Authorities on Behalf of Private Enterprises in the European Union: A Public-Private Partnership.</i>	
Gregory Shaffer	212

International Environmental Law: Lessons from the Antarctic Protection Protocol 226**The Challenge of Electronic Resources for International Law**

REMARKS BY:	
Anne Burnett and Gail Partin	229
John King Gamble	230
Jill McC. Watson	230

Clash of Civilizations? Cultural Differences in the Development and Interpretation of International Law

<i>Cultural Bias in International Law.</i>	
Alison Dundes Renteln	232
<i>In Defense of Universal Law: The Perspective of a Government Practitioner.</i>	
Nigel Purvis	244

International Law in a World of Multiple Actors: A Conversation With Louis Henkin and Louis B. Sohn

REMARKS BY:

José Alvarez 248

Corporate Codes of Conduct

SUMMARY OF REMARKS BY:

Jonathan Rosenblum 265

Patrick Gnazzo 265

O. Thomas Johnson, Jr. 266

Megan Voorhes 266

Issues Involving Codes of Conduct from an ILO Perspective.

Katherine A. Hagen 267

Process, Practice and Procedure of the International Court of Justice 278

State Responsibility in a Multiactor World

Article 40(2)(E) & (F) of the ILC Draft Articles on State Responsibility:

Standing of Injured States under Customary International Law and Multilateral Treaties.

David J. Bederman 291

On Re-reading the Draft Articles on State Responsibility.

James Crawford 295

State Responsibility for Human Rights Abuses by Non-State Actors.

Stephanie Farrior 299

REMARKS BY:

Brice Clagett 303

State Crimes in the ILC Draft Articles on State Responsibility: Insights from Municipal Experience with Corporate Crimes.

David D. Caron 307

Transitional Justice: Amnesties, Truth Commissions and Beyond

Truth Commissions and Amnesties in Latin America: The Second Generation.

Naomi Roht-Arriaza 313

Amnesty, Amnesia and Remembrance: International Obligations and the Need to Prevent the Repetition of Gross Violations of Human Rights.

Heinz Klug 316

Does International Law Matter to Congress?

Does International Law Matter to Congress?

Robert F. Turner 321

Congress and International Law: The Case of UN Funding—Are We Deadbeats?

Allan Gerson 328

Economic Sanctions.

Gary Hufbauer 332

International Trade Law: Where Congress Has, Somewhat Hesitantly, Bought Into International Law.

Barry E. Carter 335

Public Participation in International Environmental Decision Making

Learning from Early NGO Activity.

Steve Charnovitz 338

Political Subdivisions as Non-State Actors

REMARKS BY:

Richard B. Bilder	342
<i>The Canada-United States West Coast Salmon Dispute: The Role of the Substate Units.</i>	
Ted L. McDorman	345
<i>Nonactor States in U.S. Foreign Relations?: The Massachusetts Burma Law.</i>	
Joel P. Trachtman	350

The Accountability of International Organizations to Non-State Actors

CHAIR: Daniel D. Bradlow	359
--------------------------------	-----

PARTICIPANTS:

Sabine Schlemmer-Schulte	360
David A. Wirth	362
Richard Bissell	362
Jo Marie Griesgraber	363
Harold K. Jacobson	364

Reading International Legal Texts

REMARKS BY:

Julie Stone Peters	374
<i>On the Indians Lately Discovered and Sixteenth-Century International Law.</i>	
Antony Anghie	374
<i>Litigious Uses of International Treaties to Determine Racial Status and its Consequences in Vichy France.</i>	
Richard Weisberg	375
<i>How Pirates Read and Misread the Berne Convention.</i>	
Susan Tiefenbrun	375
<i>Territorial Sovereignty in ICJ Jurisprudence.</i>	
Vasuki Nesiah	376

International Legal Ethics And Professional Responsibility 378**Wrap-Up: Non-State Actors and Their Influence on International Law**

REMARKS BY:

Christine Chinkin	380
Dianne Otto	381
John Jackson	383
Mark Janis	384
Virginia Leary	386

Listing of Event Panels 388**1998 Philip C. Jessup Moot Court Competition** 389**Appendices** 391**Index** 397