

# ASIL



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THE AMERICAN SOCIETY OF INTERNATIONAL LAW

# Proceedings of the 91st Annual Meeting

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IMPLEMENTATION,

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April 9-12, 1997  
Washington, D.C.

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## The American Society of International Law

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## INTRODUCTION

The 1997 Annual Meeting of the American Society of International Law was titled "Implementation, Compliance and Effectiveness," and perhaps two-thirds of the discussion dealt explicitly with that theme. This meant that the meeting was mainly concerned with how, and how well, international law works. The discussion set out in these *Proceedings* fairly neatly divides itself in two: between talk about how international law works, and talk *about talking* (and thinking) about how international law—and indeed the whole world system of which it is a part—works. The division is between those interested in fact, and those interested in the explanation of fact, or theory (most, of course, are in some measure interested in both). And if there is an occasional lapse into the realm of meta-meta-discourse, a little shoptalk of that sort can perhaps be excused in a meeting of scholars.

How well international law works can be a sore point among international lawyers, who have a professional stake in the question. For the fact is that often international law doesn't work particularly well. Loath to take comfort in the fact that law in general often does not work particularly well, some international lawyers respond to the ineffectualities of international law by constructing apologia based on supposedly obvious differences between the international legal system and other legal systems of familiar experience—differences such as international law's pronounced diffusion of the authority for making new rules and for determining claims of right. To the extent that such exercises contribute to one's understanding of the special features that distinguish international law from other legal systems, they are useful. But they do not tell the whole story. For it is also true that international law, like many other legal systems, often does work pretty well, and understanding when and why this it is likely to work well is just as important as understanding the conditions under which it is likely to falter or to break down altogether.

One of nice things about this Meeting (like most Society Annual Meetings) is the great wealth of relatively un-theoretical exposition of the workings of various quite diverse and often complex regimes. Most of this is solid and interesting stuff, which both informs and, in so doing, puts a healthy brake on tendencies toward soaring theoretical simplifications, deeply soul-satisfying as they may be. There are panels in this vein on the European Union; international regimes on corrupt business practices; securities, banking and antitrust regulation; environmental protection treaties; domestic implementation of international law; women's human rights; UN-sponsored world conferences; promotion of democratization; intellectual property; protection of minorities; the UN human rights regime; and international investment. And other discussions not explicitly in support of the meeting's theme contribute to it nonetheless, notably the several "insider briefings," including one on trade, and a panel on the private sector view of international trade negotiations.

There is also a fair measure of lively theoretical discussion, and some controversy, particularly in the two plenary "theme panels," about how best to characterize the international legal system from the point of view of implementation, compliance and effectiveness. Is it a set of rules that give rise to legal obligations, coupled with various more or less court-like contraptions for determining violations and imposing costly consequences on violators? Or is it more like a collection of rules ranging across the whole spectrum of obligatoriness, the real role of which is to provide a basis for effectively *managing* the conduct of governments or other entities through whatever formal or informal means may be at hand—the political community being too incohesive to sustain anything tougher? Or is it something different from both, such as networks of collaboration among national bureaucrats? Or is it some mixture of the three?

The answer is “none of the above,” if one is speaking of *the* international legal system, but “all of the above” if one looks individually at the multitude of discrete regimes—such as those dealt with in the panels named above—that already exist within the system. The moral that quickly emerges is that little is to be gained from debate about whether the elephant is like a serpent, a wall, or a tree, but much is to be gained from understanding what lies behind these puzzling apparently conflicting perceptions, and why they are readily reconcilable by a look at the rather complicated beast as a whole.

JOHN LAWRENCE HARGROVE

*Editor*

November 1997

**PROCEEDINGS OF THE NINETY-FIRST ANNUAL MEETING  
OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW  
IMPLEMENTATION, COMPLIANCE AND EFFECTIVENESS**

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