

FOREWORD

INTERNATIONAL JUSTICE

SHANNON TOGAWA MERCER*

EDITOR-IN-CHIEF, GEORGETOWN JOURNAL OF INTERNATIONAL LAW

On February 27 and 28 of 2017, the Georgetown Journal of International Law hosted its bi-annual conference, entitled “International Justice: Where We Stand, Where We Fall, and Where We Need to Be.” The two-day conference explored topics on the cutting edge of international law. Across the globe, countries are undergoing unprecedented change due to the rapid development of technology, evolving financial structures, and political upheaval. In the legal community, we all contribute to the contemporaneous evolution of domestic and international legal systems. But can the law evolve quickly enough to handle increasingly global problems? Is the international legal system equipped to handle increasingly complex problems? Perhaps most importantly, is “the law” enough? We gathered scholars and practitioners who were willing to question the assumption that existing legal systems necessarily create justice. Is there any daylight between the laws we have and the laws we need? In the coming years, which policy choices will influence the independent concept of “justice”?

Our symposium participants tackled these questions. First, Georgetown University Law Center students Christine Anderson, Caroline Kelly, and Alexis Wilpon explored the remedying of human rights abuses and other harmful practices in international and domestic natural resource industries; the role of the International Criminal Court in transitional justice programs using the Colombian Special Jurisdiction for Peace framework as a case study; and the striking deficiencies in the international legal approach to the existence and regulation of floating armories, or ships carrying weapons and ammunition in international waters. Separately, we welcomed the scholarship of George Washington University Law School student, Christopher Vail. Vail’s timely argument for the amendment of the Non-Proliferation Treaty to require complete nuclear disarmament also clearly describes

* J.D. *cum laude*, Georgetown University Law Center, 2017. A.B. *cum laude*, Princeton University, 2011. Editor-in-Chief, Georgetown Journal of International Law, Volume 48. © 2017, Shannon Togawa Mercer.

the framework through which international law approaches modern nuclear deterrence.

Four of our guests discussed international law from a domestic perspective. Mary DeRosa, Georgetown Law Professor, former Deputy Counsel to President Obama for National Security Affairs, former Legal Advisor to the National Security Council under President Obama, and former Deputy Legal Adviser to the National Security Council in the Clinton Administration, interviewed current General Counsel of the Federal Bureau of Investigation (FBI), James Baker. The two discussed the FBI's role in international law enforcement and the domestic tension between technological advancement and law enforcement duties. John B. Bellinger III—Adjunct Senior Fellow in International and National Security Law at the Council on Foreign Relations, Partner at Arnold & Porter, Kaye, Scholer LLP, former Legal Adviser for the United States Department of State, former Senior Associate Counsel to the President, and former Legal Adviser to the National Security Council—spoke about the Trump Administration's challenges in international law. Rosa Brooks, Georgetown Law Professor and the founder of the Department of Defense's Office for the Rule of Law and International Humanitarian Policy, comprehensively outlined the last decade's development of a more robust but still fragile system of international justice, the threats posed to this system by the Trump Administration, and the importance of U.S. allies in helping regulate the role of the United States in international justice institutions.

Michel Paradis, Defense Counsel for Department of the Defense and Adjunct Professor of Law at Georgetown University Law Center and Columbia Law School, took a different approach to our questions. He looked behind the law to trace the development of illiberal policies, beginning with discrimination against non-citizens within the justice system.

Of particular interest to us is the development of the law regulating the use of technology. The Tallinn Manual 1.0 was the product of an international collaborative process to address malicious cyber activity through the lens of the law of armed conflict. The Tallinn Manual 2.0 broadens the scope of discussion to include cyber operations beyond armed conflict. We were fortunate to have a member of the International Group of Experts on both versions of the Tallinn Manual, Professor Eric Jensen of Brigham Young University Law School, alongside Colonel Gary Corn, volunteer to discuss the contours of Tallinn Manual 2.0. In this issue, you will find Professor Jensen's accompanying article, helpfully detailing the innovations made in the new version of the Tallinn Manual.

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Another visitor, Professor Mark Klamberg, spoke about his work with Lovisa Bådagård on prosecutorial discretion exercised by the Office of the Prosecutor (OTP) of the International Criminal Court (ICC). Klamberg and Bådagård have composed a comprehensive review of the ICC's prosecutorial discretion in theory and in practice. After extensive analysis, they conclude that the OTP has systematically underemphasized its discretion, and the actions of the office suggest that their strategic decisions have undermined ICC goals such as restoring peace and security and contributing to a historical record.

Finally, in perhaps our most cutting edge presentation, we explored "sextortion." Benjamin Wittes—Senior Fellow in Governance Studies at The Brookings Institution, member of the Hoover Institution's Task Force on National Security and Law, and co-founder and editor-in-chief of *Lawfare*—shared his research on the use of technology, such as malware or simple internet communication, to exploit and coerce large numbers of victims into releasing sexual images, conducting sexual favors, or other actions. The word "sextortion" encompasses a number of egregious exploitative situations, and Wittes explains the current status of sextortion prosecution through a comparative law lens, using a handful of case studies in different countries to illustrate the breadth and scope of the violations. Ultimately, this profile of sextortion suggests that "we need to think about what international crime is in a more imaginative fashion . . . in a world in which we are all communicating constantly with people overseas . . . a huge number of things that we think of as local person-to-person misconduct are actually properly thought of as matters of international justice."

This issue's purpose is to contribute to a body of scholarship that pushes the boundaries of conventional international law. The articles, notes, and transcripts in this issue run the gamut of cross-border challenges to justice. In focusing on the gaps or inadequacies of the law and innovations in policy, our scholars bring into relief the opportunities for growth in the law.

For making this all possible, I would like to thank the Georgetown University Law Center, the Office of Journal Administration, and Georgetown Journal of International Law Symposium Editor and Executive Board member, Nour El-Kebbi. The Journal would also like to thank the students, professors, practitioners, experts, and scholars who attended our conference, participated in our event, and contributed to this issue.