

106th American Society of International Law Annual Meeting Confronting Complexity

PANEL PROPOSAL BY THE
INTERNATIONAL ENVIRONMENTAL LAW INTEREST GROUP
by Hari Osofsky

Complexities of Climate Change Adaptation

Although much of the dialogue about climate change focuses on efforts to mitigate, it has become increasingly clear that adaptation must be a priority as well. Even if mitigation efforts are successful, which looks unlikely, substantial adaptation will be necessary in the coming years. However, international environmental law efforts to support adaptation, particularly those under the United Nations Framework Convention on Climate Change (UNFCCC) must confront several complexities. First, adaptation will take very different forms in different places, which makes addressing adaptation comprehensively under the UNFCCC difficult. Addressing drought, for example, is very different than addressing sea level rise. Second, even places facing similar changes vary in their financial resources, technical capacity, and options. In some places, people must make adjustments, but other places will become uninhabitable and this range will stretch the capacity of the UNFCCC. While the UNFCCC is attempting to provide for technology transfer and adaptation funding, it is not equipped to address whether the definition of a state should evolve under international law to encompass states that lose their territory. Third, many types of international law are potentially applicable to climate change adaptation, and these legal regimes are simultaneously fragmented and overlapping. For example, if there is substantial climate change migration, to what extent should it be addressed under international environmental law and to what extent should it be addressed under refugee law? What if climate change is one reason among many for migration, political instability, or armed conflict? Finally, to the extent that much of the adaptation measures are place-specific, international law, with its nation-state orientation, struggles to incorporate subnational and nongovernmental efforts and transnational coalitions of these actors. The UNFCCC for example lacks mechanisms for incorporating in more than minimal ways the efforts of these transnational coalitions. This roundtable discussion will explore these complexities and propose ways forward. It will consider what has already been done and what should be done to make progress on these critical concerns. In so doing, it will add a novel focus to the dialogue at ASIL over climate change, as panels in the past few years have explored the international efforts under the United Nations Framework Convention on Climate Change, climate justice, and geo-engineering, but have not addressed adaptation and its complexities in depth.

Proposed Moderator: Hari Osofsky, University of Minnesota Law School

Proposed Panelists:

- Deepa Badrinarayana, Chapman University School of Law
- Maxine Burkett, University of Hawaii School of Law
- Brad Karkkainen, University of Minnesota Law School
- Lavanya Rajamani, Centre for Policy Research, New Delhi
- Farhana Yamin, Portfolio Manager, Children's Investment Fund, Climate Change
- One of the three co-chairs of the Obama Administration's Climate Change Adaptation Task Force: Nancy H. Sutley, Chair, Council on Environmental Quality; Jane Lubchenco,

Administrator, National Oceanic and Atmospheric Administration; or Shere Abbott,
Associate Director for Environment, Office of Science and Technology Policy