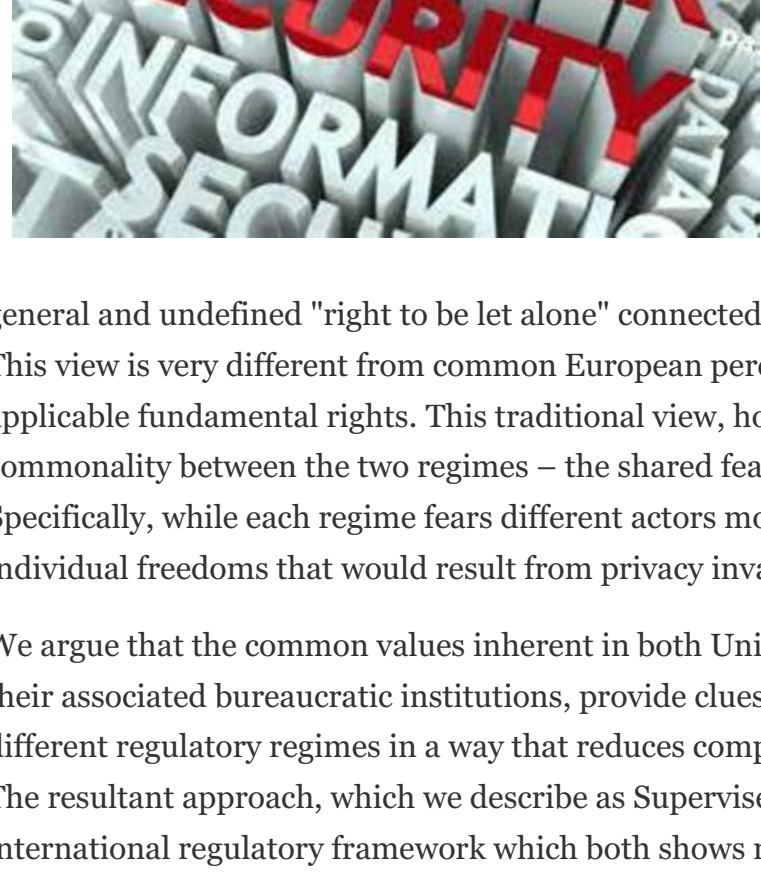




### Upcoming Events



#### Transatlantic Perspectives of Privacy and Cybersecurity: A Proposal with Pierluigi Perri, Ph.D and David Thaw

Co-sponsored with ISP

When: October 25, 2016; 1:00p  
Where: Sterling Law Building; 128

The idea that the US and EU have different perceptions about privacy values is widespread. When describing the U.S. view, much scholarship starts from Warren and Brandeis' Article "The Right to Privacy" which presents a general and undefined "right to be let alone" connected to a principle of excluding private spheres from public view. This view is very different from common European perceptions of privacy, which are based on concepts of generally applicable fundamental rights. This traditional view, however, is incomplete, because it overlooks a critical commonality between the two regimes – the shared fear of what bad actions the "privacy intruder" will take. Specifically, while each regime fears different actors most – both are concerned about the "chilling effects" on individual freedoms that would result from privacy invasions.

We argue that the common values inherent in both United States and European Union privacy regulation, and in their associated bureaucratic institutions, provide clues to developing a framework for coordinating these two different regulatory regimes in a way that reduces compliance transaction costs. The resultant approach, which we describe as Supervised Market-Based Regulation (SMBR), allows for an international regulatory framework which both shows respect for national differences in privacy preferences while allowing for harmonized compliance procedures which reduce barriers to free flow of information and discourage compliance-avoidance activities.

Such coordination has many benefits for data flow between the two countries, particularly for the multinational technology companies who face a current patchwork of regulatory compliance procedures which differ from nation to nation. Furthermore, based on the success of a similar framework at regulating healthcare cybersecurity in the United States, we hypothesize that such an approach may have benefits for transnational cybersecurity regulation as well that is strictly connected with privacy.

The idea of a SMBR applied to cybersecurity already has some use both in the US and EU. The EU Directive on Security of Network and Information Systems (NIS Directive) requires that Member States maintain cybersecurity procedures and encourages cybersecurity cooperation, but delegates to the individual States details of implementation. In the US, cybersecurity regulation in the healthcare sector employs a similar approach of specifying areas of focus but delegating implementation details to industry actors under the HIPAA Security Rule.

Additionally, as part of the EU cybersecurity strategy, the European Commission and the European Cyber Security Organisation (ECISO) recently signed a contractual Public-Private Partnership (cPPP) which is expected to drive further market-oriented policy measures in the forthcoming months.



#### Brexit and the UK's International Law Obligations: Dapo Akande Dolor

Co-sponsored with Harold Hongju Koh, *Brexit and the Law*

When: October 25, 2016; 6:00pm  
Where: Sterling Law Building; Faculty Lounge

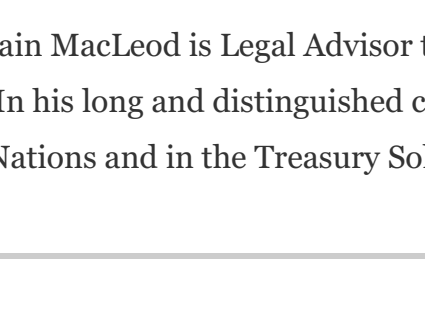
Dapo Akande is a Professor of International Law at Oxford University and is also Yamani Fellow at St Peter's College and Co-Director of the [Oxford Institute for Ethics, Law and Armed Conflict \(ELAC\)](#) & the [Oxford Martin Programme on Human Rights for Future Generations](#). He has held visiting professorships at Yale Law School (where he was also Robinna Foundation International Fellow), the University of Miami School of Law and the Católica Global Law School, Lisbon. Before taking up his position in Oxford in 2004, he was Lecturer in Law at the University of Nottingham School of Law (1998-2000) and at the University of Durham (2000-2004). From 1994 to 1998, he taught international law (part-time) at the London School of Economics and at Christ's College and Wolfson College, University of Cambridge.



#### Lunchtime Talk with Fatema Jafari (Yale World Fellow)

When: October 26, 2016; 12:00pm  
Where: Sterling Law Building;

Fatema Jafari is a women's rights advocate and public official recently reelected as a member of the Provincial Council of Herat, where she serves on a number of committees related to women's rights in Afghanistan. As head of the family support committee, she facilitated the creation of an umbrella group of roughly 80 women's organizations to help coordinate their efforts. Previously she participated in three *loya jirgas* (consultative councils) from 2009–2013. She has worked on several advocacy campaigns opposing violence against women and has pressed for greater respect for women's rights at the national level. Since 2008, Fatema has also worked as deputy director of Neswan Association, an Afghan civil society organization dedicated to women's vocational training. On April 2012, Fatema was invited to the U.S. for the International Visitors Leadership Program, where she obtained training on good governance. Fatema is a frequent contributor to media programs and TV shows, speaking about women's rights and women's political participation.



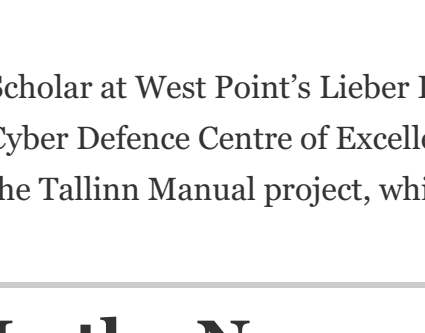
#### Lunchtime Talk with Michael Sulmayer

Co-sponsored with ISP

When: October 31, 2016; 12:10pm  
Where: Baker Hall; A005

Dr. Michael Sulmayer is the Belfer Center's Cyber Security Project director at the Harvard Kennedy School. He recently concluded several years in the Office of the Secretary of Defense, serving most recently as the Director for Plans and Operations for Cyber Policy. He was also Senior Policy Advisor to the Deputy Assistant Secretary of Defense for Cyber Policy. In these jobs, he worked closely with the Joint Staff and Cyber Command on a variety of efforts to counter malicious cyber activity against U.S. and DoD interests. Previously, he worked on arms control and the maintenance of strategic stability between the United States, Russia, and China.

As a Marshall Scholar, Sulmayer received his doctorate in Politics from Oxford University, and his dissertation, "Money for Nothing: Understanding the Termination of U.S. Major Defense Acquisition Programs," won the Sir Walter Bagehot Prize for best dissertation in government and public administration. He received his B.A. and J.D. from Stanford University and his M.A. in War Studies from King's College London. In the mid-1990s, he was the System Operator (SysOp) of The Summit BBS in Santa Barbara, California.



#### Brexit and U.K. Foreign Policy (and the Challenge to Scotland) Off the record session with Iain MacLeod

Co-sponsored with Harold Hongju Koh, *Brexit and the Law*

When: November 1, 2016  
Where: Sterling Law Building;

Iain MacLeod is Legal Advisor to UK Foreign and Commonwealth Office, senior lawyer in the UK Foreign Ministry. In his long and distinguished career, he previously served as Legal Advisor to the UK Mission to the United Nations and in the Treasury Solicitor's Office, and was deeply involved in Northern Ireland.



#### Lunchtime Talk with Richard Salgado

Co-sponsored with ISP

When: November 8, 2016; 12:00pm  
Where: Sterling Law Building; 128

Richard Salgado serves as Google's Director for information security and law enforcement matters. Prior to joining Google, Richard was with Yahoo!, focusing on international security and compliance work. He also served as senior counsel in the Computer Crime and Intellectual Property Section of the United States Department of Justice. As a federal prosecutor, Richard specialized in investigating and prosecuting computer network cases, such as computer hacking, illegal computer wiretaps, denial of service attacks, malicious code, and other technology-driven privacy crimes.

In 2005, Richard joined Stanford Law School as a legal lecturer on computer crime and on Internet business legal and policy issues; he previously served as an adjunct law professor at Georgetown University Law Center and George Mason Law School and as a faculty member of the National Judicial College. Richard is a senior instructor with the SANS Institute, teaching on the legal issues in computer forensics and network investigations.

He regularly speaks on the legal and policy implications of searching and seizing computers and electronic evidence, emerging surveillance technologies, digital evidence, and related criminal conduct. Richard graduated magna cum laude from the University of New Mexico and in 1989 received his JD from Yale Law School



#### The Tallinn Manual Journey: Identifying the International Law Applicable to Cyber Operations with Michael Schmitt

Co-sponsored with ISP

When: November 15, 2016; 12:00pm  
Where: Sterling Law Building; 128

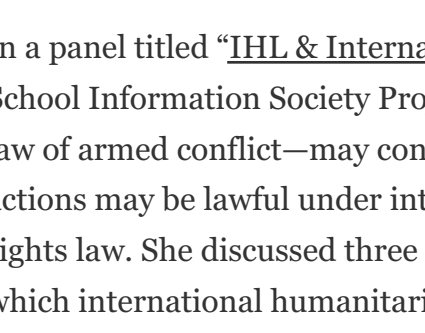
Michael Schmitt is Chairman & Charles H. Stockton Professor at the US Naval War College's Stockton center for the Study of International Law and Professor of Public International Law at Exeter Law School in the United Kingdom. He is also the Francis Lieber Distinguished Scholar at West Point's Lieber Institute for Law and Land Warfare and Senior Fellow at the NATO Cooperative Cyber Defence Centre of Excellence and General Editor of International Law Studies. Since 2009 he has directed the Tallinn Manual project, which is examining the international law applicable to cyber operations.

### In the News



#### David Sanger Discusses Cyberwar

On October 17, David Sanger, the Pulitzer-Prize winning correspondent for the New York Times, led a discussion on cyberwar, hacking, and deterrence. Sanger made the case for greater government transparency in discussing cyber capabilities, arguing that public discussion of cyber conflict is badly needed. He also shed light on the process of reporting on cyber conflict, including his work in covering the Stuxnet attack on Iran.



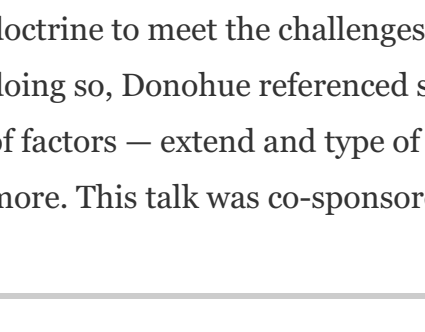
#### Yale-Duke Foreign Relations Law Roundtable Examines International Agreements

On Saturday, October 15, the Center for Global Legal Challenges at Yale Law School and the Center for International and Comparative Law at Duke Law School hosted the annual Yale-Duke Foreign Relations Law Roundtable. The roundtable brought together more than 20 of the country's leading scholars of foreign relations law to address the future of international agreements.

The roundtable also featured keynote remarks on the continued importance of Senate-approved Article II treaties by Avril Haines, U.S. Deputy National Security Adviser, and Brian Egan, the Legal Adviser at the U.S. Department of State.

Each participant in the off-the-record roundtable prepared a short paper on one of four topics: Article II treaties, executive agreements, non-binding bilateral agreements, and the fragmentation of international cooperation.

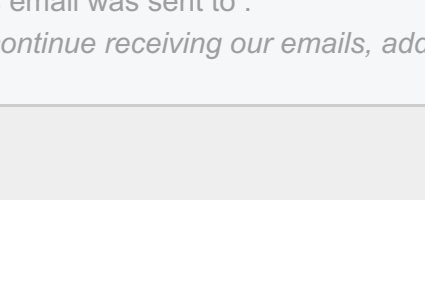
Among the questions raised were whether Senate-approved treaties are on the decline; if so, whether that is problematic for U.S. foreign relations or the development of international law; why such a trend may be occurring; and how Article II treaties compare to other types of international agreements. Participants discussed the Obama Administration's most prominent recent international agreements—the Iranian nuclear deal and the Paris Climate Change accord—neither of which was submitted to the Senate as a treaty.



#### Vivek Mohan Gives Talk On Privacy and Cybersecurity

On Tuesday, October 4 2016, Vivek Mohan, Privacy Counsel at Apple, gave a talk on the "Privacy and Cybersecurity: Legal Issues in Private Practice" at Yale Law School. Mohan discussed how U.S. law is often difficult to apply to new technologies, due mainly to outdated definitions and conceptions of communications. Mohan suggested that the Electronic Communications Privacy Act (ECPA) of 1986, which defines "electronic communication" in a manner inconsistent with today's technological world, is a perfect example of this. Mohan further explained that due to a disparity in the perception of the right to privacy between the *FBI v. U.S.*, the EU has stopped transmitting sensitive information to the U.S. Mr. Mohan talked briefly about the *FBI v. Apple* dispute. He argued technology companies did a good job explaining to the public why privacy is important and why it should be protected at all costs. Mohan was speaking in his personal capacity, and not on behalf of Apple, Inc. The talk was co-sponsored by the Center for Global Legal Challenges and the Information Society Project.

Mr. Mohan also joined a small group of interested students to discuss his career development over breakfast on Tuesday, October 4. He discussed his current role at Apple Inc., talked about how his current job differs from his previous roles in government and as a litigator at Sidley Austin, and gave students advice on how to craft a legal career in privacy and security law. The breakfast was co-sponsored by the Center for Global Legal Challenges and the National Security Group.



#### YLS Hosts International Humanitarian Law Workshop

An International Humanitarian Law Workshop was held at Yale Law School on Friday, September 30, 2016 and Saturday, October 1, 2016. The two-day event was sponsored by The Center for Global Legal Challenges at Yale Law School and the International Committee of the Red Cross (ICRC).

To open up the workshop, Trevor Keck and Tracey Begley, both of the ICRC, discussed the work of their organization and provided an overview of the law of armed conflict. Keck emphasized the ICRC's ability to act as a neutral intermediary between parties to a conflict—including non-state actors—and to promote compliance with international humanitarian law. The group discussed concerning trends in international humanitarian law, including a growing "protection gap" in war zones such as Syria, protracted conflicts, and increased migration flows.

The second panel discussed "The Ongoing Conflict in Syria," and featured former U.S. Ambassador to Syria Robert Ford, Brig. Gen. (ret.) Richard Gross, and Yale World Fellow Mustafa Haid. The panel discussed violations of international humanitarian law committed in the ongoing Syrian conflict. The speakers highlighted the complicated nature of the war, noting there are several legal layers of armed conflict in Syria. The panel evoked many questions about debated areas of international humanitarian law, including whether humanitarian actors can engage in defensive force and the legal implications for the reinteralization of non-international armed conflicts. The panel provided a thematic case study for the remainder of the workshop.

During the next panel, "Conflict Classification: How to Classify and Why it Matters," the ICRC's Tracey Begley provided an overview of how conflicts are classified, why this classification matters, and how in international humanitarian law applies within each classification. Begley highlighted the importance of classification to the analysis of which law applies – in an international armed conflict all Geneva Conventions apply, while in a non-international armed conflict only some of the Conventions are applicable. The protections offered have an impact on both the work of the ICRC and the protections available to armed personal and civilians. Begley further discussed ways to enter an international armed conflict and a non-international armed conflict, the ICRC's role and mandate in the two different types of armed conflict, and the importance of knowing when a conflict has come to an end.

In a panel titled "Targeting and Civilians Directly Participating in Hostilities," Brig. Gen. (ret.) Rich Gross, the former top lawyer for the U.S. military, led a discussion about the international humanitarian law rules governing targeting. After outlining the principles of necessity, distinction, and proportionality, Gen. Gross focused on difficult issues in targeting law. These included questions of when a civilian is considered to participate directly in hostilities and the difference between status and conduct-based targeting. The group then discussed real-world examples from U.S. military operations, including Operation Desert Storm and Operation Inherent Resolve. Colonel Randy Bagwell, Dean of the U.S. Army Judge Advocate General's School, discussed the importance of battlefield status of persons in times of conflict and highlighted in particular the categories of protected persons under international humanitarian law. In a panel titled, "Battlefield Status and Protected Persons," Colonel Bagwell instructed how the status of a person during conflict determines whether they are detained or interned and how a person's status determines treatment in armed conflict. He explained how protected persons, including the sick, wounded and shipwrecked persons not taking part in hostilities, prisoners of war and other detainees, civilians and civilian objects, are entitled to the greatest protections during armed conflict.

Andrea Harrison from ICRC Washington led off the second day of the conference with a session on [Detention & Internment](#). Harrison discussed the difference between detention and internment, who may be detained or interned, under what circumstances, and what review processes exist. Harrison began by discussing why there is right to be detained in armed conflict, covered the two types of detention (security detention & criminal detention), and discussed how the type of conflict influences who can be detained. The session also covered the responsibilities surrounding transfers and ended with an influence of detainees held at Guantanamo.

In a panel titled "[IHL & International Human Rights Law](#)," Rebecca Crootof, the Executive Director of the Yale Law School Information Society Project, presented on situations in which international humanitarian law—that is, the law of armed conflict—may conflict with general international human rights law. In an armed conflict, certain actions may be lawful under international humanitarian law that would otherwise run afoul of international human rights law. She discussed three different models for determining which body of law applies during wartime: one in which international humanitarian law completely displaces international human rights law, another in which the two bodies of law are interpreted in such a way that they do not conflict, and a third in which context-specific determinations are made. The group discussed how to incorporate determinations about which law applies into military rules of engagement.

Another panel titled "Non-State Actors & State Responsibility," examined the disparity between legal obligations in international armed conflicts and non-international armed conflicts. In response to this problem, Oona Hathaway, Professor of Law at Yale Law School and Director of the Center for Global Legal Challenges, Emily Chertoff '17, and Zachary Manfredi '17, discussed conclusions from their article [Ensuring Responsibility: Common Article 1 and State Responsibility for Non-State Actors](#), co-authored with Lara Dominguez '16, and Peter Tzeng '16. Relying on Common Articles 1 and 3 of the Geneva Convention and the law of state responsibility, the three co-authors suggest that international humanitarian law may impose duties on states to take affirmative steps to prevent breaches of international humanitarian law by non-state partners.

Ryan Goodman, Professor at NYU School of Law, wrapped up the conference with a presentation on his much-debated paper titled, "[Targeting War Sustaining Activities](#)." Professor Goodman posed the question: "are 'war-sustaining' objects (such as oil refineries providing revenue to ISIS) legitimate military targets? Many scholars and practitioners have argued that only objects contributing to 'war-fighting' capabilities can be targeted, while Professor Goodman argues that 'war sustaining' objects should also be legitimate targets. The conclusion rests on the scholarly work of Bothe, Partsch & Solf, and six examples of state practice. Professor Goodman described several proposed limiting principles to respond to the slippery slope argument; he proposed targets must have a "definite military advantage," should distinguish between objects and civilians working with or on these "war-sustaining objects," be limited to the specific context, and be subject to a proportionality analysis.

The workshop was made possible with the support of ICRC and the Yale Law School Oscar M. Ruebhausen Fund. Established in 1863, the ICRC operates worldwide, helping people affected by conflict and its mandate stems and promoting the law of the Geneva Conventions of 1949. We are based in Geneva, Switzerland, and employ some 14,500 people in more than 80 countries. The ICRC is funded mainly by voluntary donations from governments and from national Red Cross and Red Crescent Societies.



#### Professor Donohue Gives Talk on Fourth Amendment in a Digital World

On Tuesday, September 13, 2016, Georgetown University Professor of Law, Laura Donohue, gave a talk on the "Fourth Amendment in a Digital World" at Yale Law School. Professor Donohue laid out the Fourth Amendment doctrines developed by federal courts in the 70's and 80's, and demonstrated how these are inadequate when it comes to the digital world. Primarily, Donohue explained that past binary distinctions are eroding in the digital era, for example – how do we distinguish between "public information" and "private information" in the digital world? In what way should we address transnational communications, when those are routed through multiple countries? How should we regulate personal data held by third parties, who constantly transmit it to law enforcement authorities? All these challenges, and more, were addressed by Professor Donohue, as she argued that we need a new Fourth Amendment doctrine to meet the challenges of the digital world and protect people from unreasonable search and seizure. In doing so, Donohue referenced several court decisions, who focused their reasonableness evaluation on a multitude of factors – extend and type of information collected, length of collection, number of individuals affected, and more. This talk was co-sponsored by the Center for Global Legal Challenges and the Information Society Project.

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