DEMOCRACY IN THE CROSSHAIRS:
CYBER INTERFERENCE, DARK MONEY AND FOREIGN INFLUENCE

International law has long recognized that some infringements of another state’s sovereignty are sufficiently grave as to constitute a violation of international law, if not a casus belli. Recent cases of election interference, however, have more publicly exposed the uncertainty over the application of the general principle of non-intervention and whether attacks against democratic institutions would violate international law. Consider, for example, a cyber-attack from a foreign state that compromises the voting machines used during a democratic election. Contrast that cyber-attack with so-called “information warfare” that might involve the hacking of private correspondence and releasing it publicly via Wikileaks, or the use of social media and troll farms to spread disinformation and fake news. Add to this scenario large amounts of untraceable, illicit money transfers between an array of state and non-state actors intended to support these influence operations while making reliable legal or political attribution severely complicated. Do these infringements on the political process violate international law and if so, what should the necessary legal and political responses be?

There are a variety of legal considerations that must be addressed when answering these questions. Hacking and disclosure of private information might violate what many believe to be an international right to privacy, which is recognized by international human rights law (IHRL) but not upheld by U.S. courts. Also, the sovereign right to independence from any and all interference affirm that a nation has a right to conduct an election, without outside interference, in order to express its political will and create a representative government. Is it possible to determine, however, if and at what point acts of interference amount to a violation of sovereignty—or beyond that, an act of war? Finally, the laws of war arguably constrain some cyber-attacks, although only those that are sufficiently destructive to fall under that paradigm—cyber-based interference and disinformation campaigns do not cause physical damage, but they have sufficient power to destroy the legitimacy of an institution without the need for physical force. If acts of interference remain below the threshold of war, what mechanisms are available for objecting to clear violations of sovereignty as a result of foreign interference?

Even assuming that foreign interference in a democratic election is unlawful, there is then the added question of what actions a state might take in defense of its institutions. The traditional toolkit for international lawyers include retorsions and counter-measures. Are these the appropriate responses when a state is faced with information warfare? It may well be that foreign interference, like espionage and covert military operations, have become expected aspects of geopolitics requiring active counter-measures but which cannot be entirely prevented or deterred. Can the idea of an independent, insular election, confined to a single polity, be defended, or is it a relic of the past?

The conference will focus on these key themes:

- The historical roots of foreign interference
- Patterns of interference in domestic and foreign elections
- The legal status of cyber-based foreign interference
- Foreign Interference in the midterm elections
- The role of dark money in U.S and European elections
- The future of information warfare: warfare as we know it? Or a weaponization of information and free speech and free press principles

Attendance at the non-keynote sessions of this conference is by invitation only.

There are two sessions open to the public.
Please see the “Keynote” page for more information.
Thursday, November 1, 2018

At the University of Pennsylvania Law School

4:30 pm 6:00 pm


Moderated by Professor Claire Finkelstein

This event will take place at Penn Law in the Michael Fitts Auditorium

Register for the Haaga Lecture HERE

Friday, November 2, 2018

Unless otherwise indicated, all events will be held at the National Constitution Center in Philadelphia

8:30 am 9:30 am
Sign-In and Continental Breakfast - John C. Bogle Chairman’s Room

9:30 am 9:45 am
Welcome Remarks

9:45 am 11:00 am
Session 1—Historical Roots of Foreign Interference: The Framers and Their Efforts to Secure Democratic Independence
Moderator: Professor Stanley Katz

Concern over foreign interference in domestic institutions has deep roots in the history of liberal democracy. In the American context, the founding fathers held a deep regard for the dangers posed by foreign actors wishing to interfere in the domestic institutions of the young republic. To that end, the Constitution of the United States contained specific provisions that sought to ensure that the institutions which it set up would be protected from unwanted outside interference. The laws and regulations which followed the Constitution reflect this deep-seated aversion to foreign interference.

This session will discuss the historical roots of foreign interference and the foundations put in place to protect domestic institutions from foreign interference. The objective of this session is to unpack the intentions of the founding fathers and to place these intentions and their aversion to foreign interference in the context of contemporary political institutions.

11:00 am 11:30 am
Break

11:30 am 12:45 pm
Session 2—Patterns of Disinformation in Domestic and Foreign Elections
Moderator: Professor Mitch Orenstein

Recent elections throughout the world have been subjected to overt and covert foreign interference operations. These operations have been conducted by traditional state actors and by non-state actors who may or
may not receive material support or operational direction from a state sponsor. These foreign disinformation campaigns have exploited all domains of political, financial, and societal interaction. Their intent is often to damage and/or destroy the credibility and/or stability of the democratic processes they target. In some of the more notorious instances, it may be argued that these foreign disinformation campaigns have even sought to achieve a particular electoral outcome.

What patterns have emerged within the conduct of foreign disinformation and interference campaigns? The increasing importance of technology, social media, and digital media has changed the face of information warfare, whereby these everyday aspects of modern society act as a force multiplier significantly increasing the ease with which a foreign entity can influence an electoral process. The difference, however, between these modern operations and their predecessors may be less than they are the same. Drawing on the history of foreign interference, what lessons can be applied to current foreign attempts to influence the democratic electoral processes?

12:45 pm 2:00 pm Lunch - Delegates Dining Room

2:00 pm 3:15 pm Session 3— Cyber-Based Foreign Interference
Moderator: Professor Michael Posner

Cybersecurity and cyberwarfare have become increasingly relevant in recent years. In democratic elections, attention has focused on a spate of hacking attacks that seek to embarrass and undermine candidates, political parties, and institutions by stealing, manipulating, and releasing damaging material timed with the election cycle. Moreover, state and non-state political actors have taken to social media and digital news media outlets to create and disseminate fictitious or augmented stories intended to drive a particular political or cultural narrative. One could also see these acts as an attempt to electronically disrupt vital infrastructure, when infrastructure is defined widely to include the necessary political infrastructure for a country to function. In that regard, what we are seeing in democratic elections may represent an exploitation of technology that amounts to an act of war under international law.

This discussion will seek to understand foreign interference in democratic institutions in the context of the existing laws and norms governing international conflict and cybersecurity. One of the major questions at hand is at what point does an act of foreign interference amount to an act of war? Lawyers, politicians, and strategists alike have struggled with this question in the context of deliberate cyberattacks but have been similarly unable to come to a consensus. Is it possible to reconcile existing laws and norms with the advent of cyber-based foreign interference, or will new laws and institutions be required in order to curtail unwanted interference?

3:15 pm 4:00 pm Break

4:00 pm 6:00 pm Public Keynote Panel—“Foreign Interference in the Democratic Process: Countdown to the Midterms”
Moderator: Trudy Rubin. Panelists: Mr. Clint Watts, Mr. Raymond Baker, Mr. Shawn Turner, Professor Mitchell Orenstein and other distinguished guests

This event will take place in the F.M. Kirby Auditorium of the National Constitution Center.

Register for the Public Keynote Panel HERE

6:00 pm 7:00 pm Reception - The Monaco Hotel - Rooftop, Vapor Pavilion

7:00 pm 8:30 pm Participant Dinner - The Monaco Hotel - Lafayette North, Ballroom

Keynote presentation by Dean Elizabeth Rindskopf Parker
Participants

Raymond Baker  
President, Global Financial Integrity

Paul Barrett  
Deputy Director, NYU Center for Business and Human Rights

Hon. Harold Berger  
Senior Partner and Managing Principal, Berger Montague PC

Vivian Berger  
Nash Professor of Law Emerita, Columbia University; CERL Executive Board

Professor Hannah Bloch-Wehba  
Assistant Professor of Law, Drexel University Thomas R. Kline School of Law

James Bopp  
Attorney, Bopp Law Firm

Professor Sarah Bush  
Associate Professor of Political Science, Yale University

Mary Chaney  
Attorney, The Cyber Security Law Firm of Texas

Pamela Craven  
Board Member and Chair of the Compensation Committee, Amber Road, Inc.

William Craven  
Chair, Federal Systems Inc.; CERL Executive Board

Professor Kevin DeSouza  
Professor of Business, Technology & Strategy, Queensland University of Technology; Nonresident Senior Fellow, Brookings Institution

Arlene Fickler  
Partner, Schnader Harrison Segal and Lewis LLP; CERL Executive Board

Professor Claire Finkelstein  
CERL Founder & Faculty Director; Algernon Biddle Professor of Law and Professor of Philosophy, University of Pennsylvania

Professor Jeffrey Green  
Professor and Director of Andrea Mitchell Center for the Study of Democracy, University of Pennsylvania

Paul Haaga, Jr.  
Board of Directors, National Public Radio; CERL Executive Board Chair

Professor Richard Harknett  
Professor and Department Head of Political Science, University of Cincinnati

Professor Richard Immerman  
Professor and Edward Buthusium Distinguished Faculty Fellow in History Emeritus; Emeritus Marvin Wachman Director, Center for the Study of Force and Diplomacy, Temple University

Stanley Katz  
President Emeritus, American Council of Learned Societies; Lecturer with rank of Professor of Public and International Affairs, Princeton University.
Eileen Kenney  
CERL Director of Engagement

Professor Young Mie Kim  
Professor at the School of Journalism and Mass Communication, University of Wisconsin-Madison

Sheila Krumholz  
Executive Director, Center for Responsive Politics

Professor Susan Landau  
Bridge Professor of Cyber Security and Policy at the Fletcher School of Law and Diplomacy and the School of Engineering, Department of Computer Science, Tufts University

Professor William Laufer  
Julian Aresty Endowed Professor; Professor of Legal Studies & Business Ethics, Sociology, and Criminology; Director of the Carol and Lawrence Zicklin Center for Business Ethics Research, University of Pennsylvania

Professor Duncan MacIntosh  
Chair, Department of Philosophy, Dalhousie University; CERL Executive Board

Professor Ryan Maness  
Assistant Professor of Cyber Conflict and Strategy Defense Analysis Department Naval Postgraduate School

Daniel Medina  
Director of Strategic and Technical Engagements, Glasswall Solutions Inc.

Professor Christopher Morris  
Professor of Philosophy, University of Maryland; CERL Executive Board

Michael Noonan  
Director of the Program on National Security, Foreign Policy Research Institute (FPRI)

Professor Jens David Ohlin  
Vice Dean and Professor of Law, Cornell Law School; CERL Executive Board

Professor Mitchell Orenstein  
Department Chair of Russian and Eastern European Studies; Professor of Political Science, University of Pennsylvania

Professor Eric Orts  
Guardsmark Professor; Professor of Legal Studies and Management, Wharton School

Maia Otarashvili  
Research Fellow and Manager of the Eurasia Program, Foreign Policy Research Institute (FPRI)

Professor Michael Posner  
Jerome Kohlberg Professor of Ethics and Finance; Director of the Center for Business and Human Rights, NYU Stern School of Business

Megan Reiss  
Senior National Security Fellow, R Street Institute

Dean Elizabeth Rindskopf Parker  
Dean Emerita, University of the Pacific McGeorge School of Law

Connie Rosati  
Professor of Philosophy, University of Arizona; CERL Executive Board

Trudy Rubin  
Columnist, Philadelphia Inquirer

Matthew Shabat  
Glasswall Solutions, U.S. Strategy Manager
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