American Journal of International Law

October 1997 Vol. 91 No. 4



Published by

The American Society of International Law

AMERICAN JOURNAL OF INTERNATIONAL LAW

October 1997

NO. 4

CONTENTS		
Is Personal Freedom a Western Value? This article argues that personal autonomy a are products not of a specific region or historic developments in industrialization, urbanizations, information processing and education. many non-Western states, often resulting in grant The article also finds nothing inherently "We sonal freedoms: until recently, most of us lived that would have made the Ayatollah Khomein	cally based culture, but of recent con, transportation, communicathese have already occurred in teater emphasis on human rights. estern' in liberal values and perunder communitarian constraints	PAGE 593
Rwandan Genocide and the International Law of Radio Jamming Through examining the use of radio broadcasts U.S. responses to it, and the international laradio jamming, this article argues that the trajamming as a violation of free expression is proposes a narrow exception to the general in the free flow of information for cases of inciter rights abuse where the occurrence of genocide imminent.	aw and contemporary policy on ditional U.S. blanket rejection of no longer fully appropriate. It nternational standard supporting ment to genocide or mass human	628
Editorial Comment Important Improvements in the Functioning of United Nations That Can Be Made without C	f the Principal Organs of the Charter Revision Louis B. Sohn	652
Notes and Comments Child Labor, Trade and Investment: Toward the International Law Jan	ne Harmonization of nelle M. Diller and David A. Levy	663
Contemporary Practice of the United States Rela to International Law	ting Marian Nash (Leich)	697
International Decisions Prosecutor v. Tadić First verdict of International Criminal Tribunumerous counts, including grave breaches of The Queen v. HM Treasury and Bank of Engla Centro-Com Srl. European Court of Justice review of UK cuprevent circumvention of UN sanctions again Venezia v. Ministero di Grazia e Giustizia Italian Constitutional Court ruling on constitut of U.S. assurances that death penalty will not Regina v. Secretary of State for the Home Depter Ex parte Launder UK House of Lords review of ministerial decision in light of Chinese commitments and Europe	of the Geneva Conventions and ex parte liane Kokott and Meike Conrads reency restrictions adopted to st Serbia and Montenegro Andrea Bianchi tionality of extradition on basis be imposed artment, James D. Wilets on on extradition to Hong Kong	718

VOL. 91

Phaneuf v. Republic of Indonesia Daniel E. Murray Ninth Circuit decision on sovereign immunity where suit is based on unautho- rized act of government agent	
Current Developments Recent Practice of the Inspection Panel of the World Bank Richard E. Bissell	741
Rorman, Sharon. The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice (David Kennedy) Klabbers, Jan. The Concept of Treaty in International Law (Ian Sinclair) Petersmann, Ernst-Ulrich. The GATT/WTO Dispute Settlement System: International Law, International Organizations and Dispute Settlement (Robert Hudec) Yturriaga, José A. de. The International Regime of Fisheries: From UNCLOS 1982 to the Presential Sea (William T. Burke) Stephens, Beth, and Michael Ratner. International Human Rights Litigation in U.S. Courts (Ralph G. Steinhardt) Alexandrov, Stanimar A. Self-Defense Against the Use of Force in International Law (George K. Walker) McCormack, Timothy L. H. Self-Defense in International Law: The Israeli Raid on the Iraqi Nuclear Reactor (George K. Walker) Amerasinghe, C. F. Principles of the Institutional Law of International Organizations (Christoph H. Schreuer) Tomuschat, Christian (ed.). The United Nations at Age Fifty: A Legal Perspective (Carolyn L. Willson) Dijkzeul, Dennis. The Management of Multilateral Organizations (Michael G. Schechter) McConnell, Fiona. The Biodiversity Convention: A Negotiating History (Melinda Chandler) Joyner, Christopher C., and Ethel R. Theis. Eagle over the Ice: The U.S. in the Antarctic (M. J. Peterson) Stewart, Terence P. (ed.). The World Trade Organization: The Multilateral Trade Framework for the 21st Century and U.S. Implementing Legislation (Gregory)	745 748 750 752 755 757 757 769 762 764 766 767
Shaffer) Collected Essays: International Law as a Language for International Relations. Le Droit international comme language des relations internationales. El Derecho internacional como lenguaje de las relaciones internacionales, 769; Recueil des Cours. Collected Courses of the Hague Academy of International Law 1995 (Vol. 256), 770, 1996 (Vols. 257 & 258), 770; Theory of International Law at the Threshold of the 21st Century: Essays in honour of Krzysztof Skubiszewski, 770.	767
Books Received	771
International Legal Materials. Contents, Vol. XXXVI, No. 4 (July 1997) and No. 5 (September 1997)	776
Table of Cases	779
Index	782

BOARD OF EDITORS

Editors in Chief

THEODOR MERON NYU School of Law

DETLEV F. VAGTS Harvard Law School

GEORGE H. ALDRICH The Hague, Netherlands

JOSÉ E. ALVAREZ University of Michigan Law School

JUDITH HIPPLER BELLO Washington, D.C.

CHARLES N. BROWER Washington, D.C.

THOMAS BUERGENTHAL

The George Washington University Law School

DAVID D. CARON

University of California, Berkeley School of Law

JONATHAN I. CHARNEY Vanderbilt University School of Law

CHRISTINE M. CHINKIN **London School of Economics**

JOHN R. CROOK Washington, D.C.

LORI FISLER DAMROSCH Columbia University School of Law

MICHAEL J. GLENNON University of California, Davis School of Law

KEITH HIGHET Washington, D.C. JOHN H. JACKSON

University of Michigan Law School

BENEDICT KINGSBURY Duke University School of Law

HAROLD HONGIU KOH Yale Law School

STEPHEN C. McCaffrey University of the Pacific McGeorge School of Law

MICHAEL J. MATHESON Washington, D.C.

BERNARD H. OXMAN University of Miami School of Law

ANNE-MARIE SLAUGHTER Harvard Law School

PHILLIP R. TRIMBLE University of California, Los Angeles School of Law

PETER D. TROOBOFF Washington, D.C.

EDITH BROWN WEISS Georgetown University Law Center

BURNS H. WESTON University of Iowa College of Law

CHARLOTTE KU, ex officio

Honorary Editors

RICHARD B. BILDER University of Wisconsin Law School

RICHARD A. FALK Princeton University THOMAS M. FRANCK

New York University School of Law

LOUIS HENKIN

Columbia University School of Law

HAROLD K. JACOBSON University of Michigan

MONROE LEIGH Washington, D.C.

Andreas F. Lowenfeld

New York University School of Law

MYRES S. McDougal Yale Law School COVEY T. OLIVER

University of Pennsylvania Law School

STEFAN A. RIESENFELD

University of California, Berkeley School of Law

Seymour J. Rubin

Washington College of Law The American University

OSCAR SCHACHTER

Columbia University School of Law

STEPHEN M. SCHWEBEL The Hague, Netherlands

Louis B. Sohn

The George Washington University Law School

ERIC STEIN

University of Michigan Law School

ROBERT VON MEHREN New York, N.Y. RICHARD YOUNG

Van Hornesville, N.Y.

Associate Editor Anna Ascher Editorial Assistant RENEE S. BROWN Assistant Editor Emerita ELEANOR H. FINCH

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

The American Society of International Law was organized in 1906 "to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice." Society membership is open to all persons of whatever nationality and profession who are interested in its objectives. Dues are: regular, \$125; special category, \$90; intermediate, \$95; student, \$45. Sustaining Memberships—contributing (\$225), supporting (\$350), annual patrons (\$825) and patrons (\$7,500)—are also available. Corporations may join ASIL as institutional members (\$2,000).

OFFICERS OF THE SOCIETY, 1997-1998

Honorary President Stephen M. Schwebel President
Past Presidents: David G. Gill, Louis Henkin, Keith Highet, Monroe Leigh, Myres S. McDougal, Covey T. Oliver, William D. Rogers, Oscar Schachter, Louis B. Sohn, John R. Stevenson, Peter D. Trooboff, Edith Brown Weiss
Honorary Vice Presidents: Richard B. Bilder, Thomas Buergenthal, Barry E. Carter, Maxwell Cohen, Edward Dumbauld, Richard A. Falk, Thomas M. Franck, John Lawrence Hargrove, Rita E. Hauser, Rosalyn Higgins, John H. Jackson, Virginia A. Leary, Leonard Legault, Cynthia C. Lichtenstein, Andreas F. Lowenfeld, Ved P. Nanda, Franz M. Oppenheimer, W. Michael Reisman, Elliot L. Richardson, Henry J. Richardson III, Stefan A. Riesenfeld, Seymour J. Rubin, Eric Stein, Paul C. Szasz, Cyrus R. Vance
SecretaryFREDERIC L. KIRGISTreasurerJOSEPH GUTTENTAGAssistant TreasurerNANCY PERKINS

PATRONS OF THE SOCIETY

ARTHUR H. DEAN (deceased)
HERMAN PHLEGER (deceased)
GENEVIEVE E. TILLAR (deceased)
W. ROBERT MORGAN (deceased)
BRUNSON MACCHESNEY (deceased)
ALONA E. EVANS (deceased)
JOHN N. HAZARD (deceased)
JOHN R. STEVENSON
ARTHUR R. ALBRECHT
ALWYN V. FREEMAN (deceased)
EDWARD DUMBAULD
KEITH HIGHET
STEPHEN M. SCHWEBEL
WILLIAM D. ROGERS

SEYMOUR J. RUBIN
JOHN LAWRENCE HARGROVE
FRANK A. BAUMAN
RICHARD W. EDWARDS, JR.
HUSAM MESHAL
MRS. RICHARD BAXTER
ENRIQUE P. SYQUIA
RITA E. HAUSER
HOWARD M. HOLTZMANN
ARTHUR W. ROVINE
OSCAR SCHACHTER
BASIL S. YANAKAKIS
GERALD AKSEN
ANTHONY D'AMATO
EARL A. SNYDER

IN MEMORIAM

Dr. James Brown Scott Henry C. Morris

STANLEY P. SMITH

ARTHUR K. KUHN
ALEXANDER FREEMAN

PATRONAGE, GIFTS AND BEQUESTS

Upon donation to the Society of \$7,500 or more by gift or bequest, any member of the Society or individual eligible for membership may be elected a Patron of the Society. Upon donation of at least \$7,500 in the name of a deceased person, such person may be elected a Patron posthumously.

Gifts and bequests may be made in the name of The American Society of International Law, Washington, D.C. Such contributions are deductible from federal returns for income, estate and gift tax purposes. The Society is incorporated by Act of Congress approved September 20, 1950 (64 Stat. 869).

MANLEY O. HUDSON MEDAL

The American Society of International Law bestows from time to time without regard to nationality a gold medal to commemorate the life work of Manley O. Hudson. Such awards are made for preeminent scholarship and achievement in international law and in the promotion of the establishment and maintenance of international relations on the basis of law and justice. Medals have been awarded to Manley O. Hudson (1956), Lord McNair (1959), Philip C. Jessup (1964), Charles De Visscher (1966), Paul Guggenheim (1970), Myres S. McDougal (1976), Eduardo Jiménez de Aréchaga (1978), Richard Reeve Baxter (1981), Oscar Schachter (1981), Hardy Cross Dillard (1982), Suzanne Bastid (1984), Marjorie M. Whiteman (1985), Leo Gross (1986), Robert Y. Jennings (1993), Louis Henkin (1995), Louis B. Sohn (1996), and John R. Stevenson (1997).

ORDERS AND INQUIRIES

Subscriptions, Back Issues and Cumulative Indexes: Orders and inquiries should be sent to the American Journal of International Law, 2223 Massachusetts Avenue, N.W., Washington, DC 20008-2864. Fax: (202) 797-7133. On-line at (http://www.asil.org). The AJIL (ISSN 0002-9300) is published quarterly, in January, April, July and October, and is supplied to all members of The American Society of International Law. The annual subscription rate to nonmembers is \$140 (\$175 outside U.S.). Claims for undelivered issues must be made in writing within six months of the mailing date. Volumes 79 (1985) to date are available from the AJIL at \$160 per volume, \$45 per single issue. Volumes 1–78 (1907–1984) are available from Fred B. Rothman & Co., 10368 West Centennial Road, Littleton, CO 80127, U.S.A., toll-free 800-457-1986. Cumulative indexes are also available from the AJIL: 1941–1960, 1961–1970, and 1971–1980 at \$40; 1981–1990 at \$50.

Shipping/Handling: For back issues and indexes, add 20 percent for shipping and handling.

A/IL is also available in nonprint forms:

- On microform, from: William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209, U.S.A., toll-free 800-828-7571; and University Microfilms, 300 North Zeeb Road, Dept. P.R., Ann Arbor, MI 48106, U.S.A., toll-free 800-521-0600; or, 30-32 Mortimer Street, Dept. P.R., London W1N 7RA, England.
- On CD-ROM format, from: University Microfilms.
- Online through: Mead Data Central, Inc., provider of the LEXIS®/NEXIS® services, P.O. Box 933, Dayton, OH 45401, U.S.A., toll-free 800-227-9597; and West Publishing Company, provider of WESTLAW®, P.O. Box 64526, St. Paul, MN 55164-0526, U.S.A., toll-free 800-937-8529.

Authorization to photocopy items for internal or personal use (beyond that permitted by sections 107 and 108 of the U.S. Copyright Law), or for the internal or personal use of specific clients, is granted by The American Society of International Law for users registered with the Copyright Clearance Center (CCC) Transactional Reporting Service, provided that the base fee of \$5 per copy, plus 25¢ per page, is paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923. For organizations that have been granted a photocopy license by CCC, a separate system of payment has been arranged. The fee code for users of the Transactional Reporting Service is: 0002-9300/97 \$5.00 + .25. Educational copying is permitted. Please address requests to CCC Academic Permissions Service: (508) 750-8400; fax (508) 750-4744.

Advertising: Inquiries should be sent to the Services Center at the Washington, DC office. Phone: (202) 939-6003; fax (202) 797-7133.

AMERICAN JOURNAL OF INTERNATIONAL LAW

The views expressed in the articles, editorial comments, book reviews and notes, and other contributions to the AJIL are those of the individual authors and are not to be taken as representing the views of the Board of Editors or The American Society of International Law.

SUBMISSION OF ARTICLES AND BOOK REVIEWS

Manuscripts may be sent to the Editors in Chief of AJIL, Professors Theodor Meron and Detlev Vagts, New York University School of Law, 40 Washington Square South, New York, NY 10012-1005. U.S. residents are asked to submit four copies (one copy will be returned if the author so requests). Please do not submit manuscripts via facsimile. AJIL will not consider submissions whose content has been, or will be, published before it appears in this Journal.

Book reviews are by invitation: suggestions may be made to the Book Review Office, 2223 Massachusetts Avenue, N.W., Washington, DC 20008-2864. **Books for review** should be sent to the same office.

Format requirements: Articles and book reviews should be double-spaced, with double-spaced notes cumulated at the end of the manuscript. AJIL generally conforms to the footnote style of *The Bluebook: A Uniform System of Citation* (16th ed. 1996), published by the Harvard Law Review Association, Gannett House, 1511 Massachusetts Avenue, Cambridge, MA 02138.

Computer diskettes: Authors are invited to indicate whether the manuscript is available on an IBM-compatible diskette. *AJIL* uses WordPerfect 5.1.

INDEXES CARRYING AJIL

The American Journal of International Law is included in: ABC POL SCI: A Bibliography of Contents: Political Science and Government; Current Law Index; IBR—International Bibliography of Book Reviews of Scholarly Literature; IBZ—International Bibliography of Periodical Literature; Index to Foreign Legal Periodicals; Index to Legal Periodicals; International Political Science Abstracts; Public International Law: A Current Bibliography of Books and Articles; Social Sciences Index.

* * * *

Periodicals postage paid at Washington, DC, and at additional mailing office. POSTMASTER: If undeliverable, send notice on Form 3579 to American Journal of International Law, 2223 Massachusetts Ave., N.W., Washington, DC 20008-2864.

Copyright © 1997 by The American Society of International Law Printed by Lancaster Press, Lancaster, PA 17604-3657