American Journal of International Law

April 2001 Vol. 95 No. 2



Published by

The American Society of International Law

UNITED NATIONS LAW REPORTS

(Unofficial Reports on Legal Matters in the UN)

Sample Unsolicited Tributes

"Needless to say, we subscribe to your reports and find them enormously useful." Roger S. Clark, Board of Governors Professor, Rutgers School of Law.

"I would like to use the hypothetical situation presented in your editorial comment in the current UN Law Reports (relating to the United States and the International Criminal Court) as part of my international law teaching materials." Frederic Kirgis, Law School Ass'n Alumni Professor, Washington and Lee University.

"On Thursday evening, I will show my 'International Legal Research Seminar' students the wonderful current awareness tool, United Nations Law Reports." Jean Davis, Reference Librarian and Adjunct Professor of Law, Brooklyn Law School.

"I would like permission to recopy the following material(s) for the 1999-2000 academic year for use in John Norton Moore's law courses at the University of Virginia School of Law and Georgetown University Law Center: Special Supplement: opinions on the legality of NATO's attack against the FRY." Lauren Greenwood, Center for National Security Law, Univ. of Virginia School of Law.

"There is much in it of interest. * * * It's amazing how much is going on at the UN that is of legal interest. I don't know how you keep up with it all." James S. Sutterlin, former Special Assistant to Secretary-General Javier Pérez de Cuéllar.

About the Publisher and Editor

The UNITED NATIONS LAW REPORTS are published monthly by **Walker & Company**, 435 Hudson Street, New York, NY 10014 (212-727-8300, fax 212-727-0984) and cost \$150 per year (\$195 if outside the US). Subscribers receive on request, at no additional charge, the e-mail version as soon as it is completed. For a free sample, contact Walker or e-mail the Editor at JnCarey@westnet.com. http://www.UNLawReports.com

The Reports are edited by **John Carey**, BA Yale, LLB Harvard, LLM NYU, a former Vice President of the American Society of International Law, formerly an Editor of the AMERICAN JOURNAL OF INTERNATIONAL LAW, formerly Adjunct Assistant Professor at New York University School of Law, keynote speaker at International Law Weekend 1999, who served 25 years in the UN Sub-Commission on Human Rights while a partner at the Coudert Brothers law firm.

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 95	April 2001	NO. 2
	CONTENTS	
-	nentary Agreements and Compulsory Jurisdiction spute may arise under complementary treaties, each of which provides for	
tual not que:	fferent dispute settlement procedure. If these procedures are deemed muly exclusive, which should prevail and according to what criteria? If they are exclusive, how can the dissimilar procedures be accommodated? These stions implicate basic policies about the role and effect of long-term comments to compulsory jurisdiction in the international legal order.	
	Bernard H. Oxman	277
	ed States and Its Treaties: Observance and Breach	
State fede and clud com	ent developments have inspired doubts about the fidelity of the United es to its treaty obligations. This article surveys congressional overrides by eral law under the later-in-time rule, and actions by the executive, the courts, the states that limit domestic implementation of certain treaties. It conless that, contrary to general perceptions, actual U.S. practice is still largely apliant but that certain statements from each branch of the federal government indicate a new and troubling disrespect for U.S. treaty obligations.	
	Detlev F. Vagts	313
Editorial (Comments	
Women	i's International Tribunal on Japanese Military Sexual Slavery	
Restitut	Christine M. Chinkin ion as a Remedy in U.S. Courts for Violations of International Law	335
	Frederic L. Kirgis	341
Notes and	l Comments	
War and	d Peace in Refugee Law Jurisprudence Hugo Storey and Rebecca Wallace ve Order 13,141 and the Environmental Review of Trade Agree-	349
ments		366
Forum P	Prorogatum and the Advisory Proceedings of the International Court	
~	Sienho Yee	381
Corresp	oondence	385
Contempo	orary Practice of the United States Relating to International Law	
•	Edited by Sean D. Murphy	
	otion of U.S. Diplomatic Relations with the FRY	387
	ent on UN Financial and Structural Reforms	389
U.SMe	exico Continental Shelf Boundary in Gulf of Mexico	393

Acquittal of Salvadoran Generals in Nuns	' Deaths	394
Defeat of House Resolution on "Armenia	n Genocide"	396
U.S. Signing of the Statute of the Internat	ional Criminal Court	397
U.S. View of Crime of Aggression		400
ICTY Order for Disclosure of Information	by NATO/SFOR	401
U.S. Reward Program for Rwandan War C	riminals	404
Verdict in the Trial of the Lockerbie Bom	bing Suspects	405
International Trafficking in Persons, Espe		407
Admissibility of U.SEU "Hushkits" Dispu		410
Reform of U.S. Sanctions Relating to Agri		413
Obligation to Replenish Iran-U.S. Claims		414
U.S. Implementation of Intercountry Ado		416
Negotiation of Convention on Jurisdiction	and Enforcement of Judgments	418
International Decisions	Edited by Bernard H. Oxman	
Salgueiro da Silva Mouta v. Portugal; A.D.T. v	. United Kingdom (Laurence R. Helfer)	422
European Court of Human Rights decision sexual parent in child custody case and conduct		
Deutsche Post AG v. Gesellschaft für Zahlung	ssysteme mbH (GZS) and Citicorp	
Kartenservice GmbH (Juliane Kokott and		430
European Court of Justice ruling on consis		
of remailing restrictions permitted by Un	iversal Postal Convention	
Cornejo-Barreto v. Seifert (Jacques Semmelr		435
Ninth Circuit ruling on judicial review of extradite a person claiming to be in dang		190
State v. Stepansky (Mary Coombs) Florida Supreme Court decision on state cr	iminal jurisdiction over burglary and	438
sexual battery aboard cruise ship at sea op	perating out of Florida	
Current Developments		
The Military Extraterritorial Jurisdiction A		
	Mark J. Yost and Douglas S. Anderson	446
The London Declaration of International	•	
Displaced Persons	Luke T. Lee	454
Book Reviews and Notes	Edited by Richard B. Bilder	
Charlesworth, Hilary, and Christine Chinkin.		
A Feminist Analysis (José E. Alvarez)	Č	459
Collier, John, and Vaughan Lowe. The Settleme	nt of Disputes in International Law:	
Institutions and Procedures (Stephen M. Schw	ebel)	464
Lowenfeld, Andreas F. The Role of Government is	n International Trade: Essays over	
Three Decades (Robert E. Hudec)		466
Aust, Anthony. Modern Treaty Law and Practice	(Jamison Borek)	468
Szasz, Paul C. (ed.). Administrative and Expert N	Monitoring of International Treaties	
(David A. Wirth)		471
Dunne, Tim, and Nicholas Wheeler (eds.). Hi	uman Rights in Global Politics (Christine	
M. Chinkin)		472
Nicholson, Frances, and Patrick Twomey. Refug Young, Oran R. Creating Regimes: Arctic Accords	and International Governance; Joyner,	478
Christopher C. Governing the Frozen Commons	: The Antarctic Regime and Environ-	
mental Protection (Evan T. Bloom)	1000 (1/ 1 77) 404	481
Collected Essays: The Italian Yearbook of Interna Books Received	tionai Law, 1999 (Vol. 1X), 484	485
		100
International Legal Materials. Contents, Vol	. XL, No. 2 (March 2001)	487

BOARD OF EDITORS

Editors in Chief

JONATHAN I. CHARNEY Vanderbilt University School of Law

JOSÉ E. ALVAREZ

Columbia University School of Law

DAVID J. BEDERMAN

Emory University School of Law

CHARLES N. BROWER

Washington, D.C.

THOMAS BUERGENTHAL

The George Washington University

Law School

DAVID D. CARON

University of California, Berkeley

School of Law

HILARY CHARLESWORTH

Australian National University

CHRISTINE M. CHINKIN

London School of Economics

JOHN R. CROOK

Washington, D.C.

LORI FISLER DAMROSCH

Columbia University School of Law

JOAN FITZPATRICK

University of Washington

School of Law

ROBERT E. HUDEC

University of Minnesota Law School

W. MICHAEL REISMAN Yale Law School

BENEDICT KINGSBURY

New York University School of Law

FREDERIC L. KIRGIS

Washington and Lee University

School of Law

HAROLD HONGJU KOH

Yale Law School

MICHAEL J. MATHESON

Washington, D.C.

SEAN D. MURPHY

The George Washington University

Law School

BERNARD H. OXMAN

University of Miami School of Law

STEVEN R. RATNER

University of Texas

School of Law

BETH A. SIMMONS

University of California, Berkeley

ANNE-MARIE SLAUGHTER

Harvard Law School

PETER D. TROOBOFF

Washington, D.C.

RUTH WEDGWOOD Yale Law School

CHARLOTTE KU, ex officio

Honorary Editors

GEORGE H. ALDRICH

The Hague, Netherlands

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

JOHN H. JACKSON

Georgetown University Law Center

HAROLD K. JACOBSON

University of Michigan

MONROE LEIGH

Washington, D.C.

ANDREAS F. LOWENFELD

New York University School of Law

THEODOR MERON

New York University School of Law

Associate Editor
ANNA ASCHER

Managing Editor
MIEKE J. CLINCY

COVEY T. OLIVER Easton, Md. SEYMOUR J. RUBIN

Washington College of Law The American University

OSCAR SCHACHTER

Columbia University School of Law

STEPHEN M. SCHWEBEL

Washington, D.C.

LOUIS B. SOHN

The George Washington University

Law School

ERIC STEIN

University of Michigan Law School

DETLEV F. VAGTS

Harvard Law School

BURNS H. WESTON

University of Iowa

College of Law

RICHARD YOUNG

Van Hornesville, N.Y.

Assistant Editor

STEPHEN SCHER

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, \$150; special category, \$100; new professional, \$75; retired, \$100; student, \$25. Sustaining Memberships—contributing (\$250) and patrons (\$10,000)—are also available. Corporations may join ASIL as institutional members (\$2,000).

OFFICERS OF THE SOCIETY, 2000-2001

Honorary President President Vice Presidents Executive Vice President and Executive Director	Arthur W. Rovine James H. Carter, Diane P. Wood
Past Presidents: Charles N. Brower, Thomas M. Franck, Louis William D. Rogers, Oscar Schachter, Louis B. Sohn, Peter D.	D. TROOBOFF, EDITH BROWN WEISS
Honorary Vice Presidents: CHARLES N. BROWER, THOMAS M. FRANCE Counsellors: Judith N. Bello, Richard B. Bilder, Ian Br Charlesworth, Conrad Harper, Rita E. Hauser, Rosalyn Higgi Virgina A. Leary, Leonard Legault, Cynthia C. Lichtenstein, Michael Reisman, Elliot L. Richardson, Henry J. Richardson II Stein, Paul C. Szasz, Phillip R. Trimble, Christopher Weeram	OWNLIE, THOMAS BUERGENTHAL, HILARY INS, JOHN H. JACKSON, MARTTI KOSKENNIEMI, , ANDREAS F. LOWENFELD, VED P. NANDA, W. II, SEYMOUR J. RUBIN, JEROME SHESTACK, ERIC

 Secretary
 FREDERIC L. KIRGIS

 Treasurer
 JOSEPH GUTTENTAG

 Assistant Treasurer
 NANCY PERKINS

PATRONS OF THE SOCIETY

GERALD AKSEN
ARTHUR R. ALBRECHT
TEYMOUR A. ALIREZA
FRANK A. BAUMAN
MRS. RICHARD BAXTER
JOHN A. BOYD
CHARLES N. BROWER
JAMES H. CARTER
ANTHONY D'AMATO
ARTHUR H. DEAN*
SARAH WHITCRAFT DEFORD*
EDWARD DUMBAULD*
RICHARD W. EDWARDS, JR.
ALONA E. EVANS*
THOMAS M. FRANCK
ALWYN V. FREEMAN*
* deceased

JOHN KING GAMBLE JOHN LAWRENCE HARGROVE VICTORIA M. HARIRI RITA E. HAUSER JOHN N. HAZARD* KEITH HIGHET* HOWARD M. HOLTZMANN CHARLES A. HUNNICUTT RICHARD A. JOHNSON SUSAN L. KARAMANIAN CHARLOTTE KIL MRS. RICHARD LILLICH BRUNSON MACCHESNEY* HUSAM MESHAL W. ROBERT MORGAN* HERMAN PHLEGER*

WILLIAM D. ROGERS
ARTHUR W. ROVINE
SEYMOUR J. RUBIN
OSCAR SCHACHTER
STEPHEN M. SCHWEBEL
EARL A. SNYDER
JOHN R. STEVENSON*
ENRIQUE P. SYQUIA
GENEVIEVE E. TILLAR*
PETER D. TROOBOFF
DETLEV F. VAGTS
JILL MCCLANAHAN WATSON
BURNS H. WESTON
EDWIN D. WILLIAMSON
BASIL S. YANAKAKIS

IN MEMORIAM

ALEXANDER FREEMAN ARTHUR K. KUHN Dr. James Brown Scott Stanley P. Smith

HENRY C. MORRIS PATRONAGE, GIFTS AND BEQUESTS

Upon donation to the Society of \$10,000 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 \$10,000 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 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), John R. Stevenson (1997), Rosalyn Higgins (1998), Shabtai Rosenne (1999), and Stephen M. Schwebel (2000).

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. Online at http://www.asil.org. The American Journal of International Law (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 92 (1998) to date are available from the AJIL at \$160 per volume (\$134 for members), \$45 per single issue (\$38 for members). Volumes 1–91 (1907–1997) are available from William S. Hein & Co., 1285 Main Street, Buffalo, NY 14209-1987, U.S.A., toll-free (800) 828-7571. Cumulative indexes are also available from the AJIL: 1941–1960, 1961–1970, and 1971–1980 at \$40; 1981–1990 is out of print.

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

AJIL is also available in nonprint forms:

- 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.
- On the Web in JSTOR, the archive/database of scholarly journals, either through individual subscriptions by ASIL members only ((202) 939-6000), or through institutional subscriptions (JSTOR, 188 Madison Ave., New York, NY 10016; (212) 592-7345). See http://www.jstor.org for a current list of institutional subscribers.
- 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 WIN 7RA, England.
- On CD-ROM format, from: University Microfilms.

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: 0002-9300/01 \$5.00 + .25. Educational copying is permitted. Please address requests to CCC Academic Permission Service: (978) 750-8400; fax (978) 750-4744.

Advertising: Inquiries should be sent to the Marketing Coordinator, ASIL, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864. Phone: (202) 939-6019; fax (202) 797-7133.

* * * *

Periodicals postage paid at Washington, DC, and at additional mailing office. POST-MASTER: Send change of addresses to American Journal of International Law, 2223 Massachusetts Ave., N.W., Washington, DC 20008-2864.

AMERICAN JOURNAL OF INTERNATIONAL LAW

The views expressed in the articles, editorial comments, book reviews and notes, and all 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 American Journal of International Law, Vanderbilt University School of Law, 131 21st Avenue South, Suite 207, Nashville, TN 37203-1181, USA, or by E-mail to AJIL@law.vanderbilt.edu. Authors are invited to submit their manuscripts on computer disc or by E-mail attachment. If the manuscript is unavailable in electronic form, four paper copies should be submitted. Manuscripts and discs submitted will not be returned to the author. Please do not submit manuscripts via facsimile. The AJIL will not consider submissions whose content has been, or will be, published before it appears in this Journal.

The AJIL uses WordPerfect 9.0 and can convert manuscripts created in other word-processing programs into that program. Please specify the word-processing program used for manuscripts submitted in electronic form.

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 and style guidelines: All manuscripts should be double-spaced, with double-spaced footnotes. Our full Author Style Sheet is available online at http://www.asil.org/styledoc.htm. Subject to variations noted in that document, the AJIL conforms to The Bluebook: A Uniform System of Citation (17th ed. 2000) and the Chicago Manual of Style (14th ed. 1993). The style document can also be obtained via e-mail. Please send e-mail requests to mclincy@asil.org. The Bluebook can be obtained from the Harvard Law Review Association, Gannett House, 1511 Massachusetts Avenue, Cambridge, MA 02138.

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.

Copyright @ 2001 by The American Society of International Law Printed by IPC Communication Services, St. Joseph, MI 49085