## Foreword

From its beginning, the Society established as one of its primary functions the regular collection, publication, and dissemination of important international legal materials. These materials were first published as a section of the *American Journal of International Law*, and since the 1960s as the current stand-alone *International Legal Materials* publication. The publication met a critical need in that earlier era—when access to primary source legal materials was limited. Today, access to information is no longer a problem. Indeed, our challenge is too much information. And therein we find a continuing mission for *International Legal Materials*.

The dramatic growth in the international legal field makes it nearly impossible for scholars and practitioners—let alone the general public—to keep abreast of the most important international legal developments. Fortunately they can rely on our staff and Editorial Advisory Committee to sift through the vast array of documents, identify those that are truly significant, and highlight them in *International Legal Materials* and our bi-weekly electronic bulletin, *International Law in Brief.* The Society's periodic *ASIL Insights* provide additional analysis of particularly high-profile developments.

Beginning in 2007, we have been supplementing all documents published in *International Legal Materials* with an introductory note from one of the many experts ASIL counts among its members. These notes provide summaries of the documents and key insights into their significance. In this volume we feature notes by Chiara Giorgetti, Alexandra Wrage, Anne Richardson, John R. Crook, Tara J. Melish, Jamey Harris, Gerald S. Schatz, Olufemi Elias, Louis Maresca, Evan T. Bloom, Gerardo Badillo Hermoso, John Radsan, Milena Sterio, and Kathleen A. Scott. We are extremely grateful to these authors, and we are confident that you will value their contributions as well.

Please send us your comments and suggestions as we continue our efforts to meet the evolving needs of the international legal community.

Sincerely,

Elizabeth Andersen Chair Editorial Advisory Committee International Legal Materials

# International Legal Materials®

## Statement of Editorial Policy

International Legal Materials is a core publication of The American Society of International Law that reproduces texts of documents reflecting the broad scope and evolution of international law. The range of covered subjects has expanded from traditional topics such as international organizations, jurisdiction, and international trade to include developments in fields such as intellectual property, environmental law, nuclear non-proliferation, human rights, and international criminal law.

International Legal Materials serves as both a bi-monthly information service and a widely recognized archive of international law documents for a diverse, global community of legal scholars, government officials, private practitioners and institutions sharing a common interest in international law. To meet the varied demands of such a readership, documents are selected from world-wide sources on the basis of their present and future legal significance.

International Legal Materials is prepared for publication in Washington, D.C. with both the advice of the Editorial Advisory Committee and the assistance of Corresponding Editors around the world. In order to reproduce the texts of selected documents under tight production schedules, the best available source is used, whether electronic or printed.

Readers are invited to send comments to:

Djurdja Lazić Managing Editor, *International Legal Materials* The American Society of International Law 2223 Massachusetts Avenue, NW Washington, DC 20008-2864

#### **Subscription Information**

International Legal Materials (ISSN 0020-7829) is published bi-monthly (in January, March, May, July, September and November) by The American Society of International Law, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864.

For 2009 subscriptions, the rate for Society members in the U.S. is \$150; outside the U.S., \$215 (airmail delivery). The rate for non-members of the Society is \$255; outside the U.S., \$315 (airmail delivery). Subscriptions are on an anniversary basis of twelve months starting from start of subscription.

#### **Back Issues and Indices**

ILM Volumes 1-42 (1962-2003) are available from William S. Hein & Co., 1285 Main Street, Buffalo, NY 14209-1987, toll-free (800) 828-7571, http://www.wshein.com. Hein's prices for back issues vary according to the ILM volume.

Both an annual table of contents and an annual index are carried in the November issue of each volume. Decennial Indices for *International Legal Materials* are available from Hein for the following periods: 1962-1969, 1970-1979, and 1980-1989.

ILM is also indexed by ABC POL SCI, IBZ-International Bibliography of Periodical Literature, Marine Affairs Bibliography, and Public Affairs Information Service.

#### Online Access and Microfiche

International Legal Materials is available online through:

LEXIS/NEXIS — http://www.lexis-nexis.com Westlaw — http://www.westlaw.com

Complete and odd volumes of *International Legal Materials* are available on microfiche from William S. Hein & Company, 1285 Main Street, Buffalo, NY 14209-1987, toll-free (800) 828-7571, http://www.wshein.com

#### **ILM Tables of Contents — Online**

Recent ILM Tables of Contents are stored at The American Society of International Law website, http://:www.asil.org. The Society's search engine can also be used to find the ILM citation of recently reproduced documents.

© The American Society of International Law 2009

#### Change of Address, Claims and Correspondence

Please inform the ASIL Service Center of a change of address in writing at least 60 days prior to moving in order to assure uninterrupted receipt of ILM. Your post office will not automatically forward your subscription. Claims for undelivered issues must be made in writing within three months of the publication date, which is available online at <a href="http://www.asil.org/claims.htm">http://www.asil.org/claims.htm</a>.

All correspondence regarding subscriptions and claims should be addressed to:

ASIL Service Center Association Headquarters Telephone: (856) 380-6810 FAX (202) 986-4234

http://www.asil.org, or e-mail: services@asil.org

#### Advertising

Inquiries about advertising rates and specifications should be directed to the Marketing Manager at the above address, phone or fax (but not e-mail address).

#### **Authorization to Photocopy**

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 \$10 per copy, plus 25¢ per page, is paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923-4510, http://www.copyright.com

For those 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: 0020-7829/98 \$10.00 + .25.

For academic course reprints, please contact the ILM Office at 2223 Mass. Ave., NW, Washington, DC 20008-2864.

Periodicals postage paid at Washington, DC and additional mailing offices. POSTMASTER: Send address changes and returns to ILM, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864. Return postage guaranteed.

#### **Guidelines for Submission of Documents**

The ILM Office welcomes any effort to bring suitable documents to the Office's attention. Electronic files or web links are required for publication, although printed texts can be used for initial deliberations regarding republication.

The authenticity (*i.e.* official version status) of submitted documents must be easily verifiable. This is facilitated by submitting files or print versions which are clearly attributable to the original source, or by providing links to documents on the original source's official website.

If the official version of a document is not available in English, an unofficial translation is acceptable. The original text must accompany such a translation.

#### **Introductory Notes**

Introductory Notes are brief articles from one to three pages in length which are intended to provide background information for a document reproduced in ILM.

For example, an Introductory Note for a treaty might include a short history of the negotiations, the dates of signature and entry into force. An Introductory Note for legislation would give its history and international significance, while one for judicial proceedings would provide the background of the case.

The views of authors in Introductory Notes are their own and do not necessarily reflect those of either the American Society of International Law or the Managing Editor.

### **Acceptance of Materials and Corrections**

Print submissions cannot be returned. Translators and others submitting material will be notified of the acceptance of their document for publication.

Once a translation or Introductory Note has been accepted for reproduction, The American Society of International Law will send a publication agreement to the author.

Translators and Introductory Note Authors shall be acknowledged in *International Legal Materials*.

In some cases minor editorial or typographical alterations may be made without contacting the author or translator. Major corrections will be sent to the author or translator for approval. Corrected Introductory Notes or translations must be returned within the time specified.

#### **Contributions and Correspondence**

Please address all correspondence to:

Djurdja Lazić Managing Editor, *International Legal Materials* 2223 Massachusetts Avenue, NW Washington, DC 20008-2864

Telephone: (202) 939-6000 FAX: (202) 797-7133 e-mail: dlazic@asil.org

#### International Law In Brief

The Attorney-Editors of *International Legal Materials* also publish the e-mail newsletter *International Law In Brief*, which contains objective abstracts of recently released documents pertinent to international law.

Documents abstracted in *International Law In Brief* are later considered for reproduction in *International Legal Materials*.

A complete *International Law In Brief* archive is located at The American Society of International Law website (http://www.asil.org). A search engine provides an easy way to find abstracts of specific documents.

The *International Law In Brief* publication is free, but has an independent subscription.

http://www.asil.org/subscribeelectronic.cfm

To subscribe, go to the registration website at:

For further information, please contact:

Djurdja Lazić at dlazic@asil.org

#### **Managing Editor**

Djurdja Lazić

#### **Editorial Advisory Committee**

Elizabeth Andersen, Chair
Evan T. Bloom
Christina M. Cerna
John R. Crook
Jane Dalton
Anne Joyce
Nancy L. Perkins

Rafael Porrata-Doria David Stewart Charles Owen Verrill Jeffrey Walker Bruce Zagaris Nassib G. Ziadé

Members Emeriti
John Lawrence Hargrove

#### **ILM Corresponding Editors**

Judge Leslie Alden (Int'l Ass'n Women Judges) Evelina Teubal Alhadeff (Mercosur, Argentina)

Don Anton (Int'l Env., LOS) David J. Attard (Malta)

Paolo Bargiacchi (Int'l Hegemonic Law) Welber Barral (Brazil, Int'l Trade) Delroy Beckford (Trade Remedies)

Jean-François Bellis (European Communities) Charles H. Brower, II (Pub. Int'l, Arbitration)

Gian Luca Burci (Int'l Health) William E. Butler (CIS)

David JA Cairns (Investment Arbitration) James H. Carter (U.S. Second Circuit)

Elizabeth Chien Hale (IP) Sudhir Chopra (India)

Carl Q. Christol (Communications, Outer Space)

Nivoi Christopoulou (European Union) John P. Cogan, Jr. (U.S. Fifth Circuit) Alice De Jonge (Multinational Corp. Resp.) Melaku Geboye Desta (AU, Agriculture, WTO)

Christian De Vos (Human Rights) Janelle Diller (Int'l Labor Law) John R. Dugard (Southern Africa) Mete Erdem (Int'l Env., Turkey) Stephanie Farrior (Int'l Hum. Rights)

Gustavo Ferreira Ribeiro (Brazil, Int'l Economic Law)

Richard I. Fine (U.S. Ninth Circuit) Kimberly Gahan (Nat'l Security) Hannah R. Garry (Int'l Human Rights)

Giacomo Gattinara (E.U) Dencho G. Georgiev (Bulgaria) Chiara Giorgetti (Int'l Env.)

Maria Gavouneli (Greece, Cyprus, LOS) Kevin R. Gray (Int'l Trade and Environment)

Dermot Groome (Int'l Humanitarian) Moritaka Hayashi (LOS, Int'l Fisheries Law)

Eckhard Hellbeck (Int'l Dis. Res.)

Jean-Marie Henckaerts (Int'l Humanitarian Law) Cecil Hunt (Anti-Bribery Laws and Regulations) Larry D. Johnson (Int'l Atomic Energy Agency)

Sami Kallel (Maghreb)

Mark Kantor (Int'l Bus., Int'l Arbitration) Susan L. Karamanian (Investment, Arbitration) Nicholas Karambelas (Commercial Treaties, LOS) Kenneth Klein (Int'l Taxation)

Kenneth Klein (Int i Taxation)

Christina Knahr (Int'l Investment Arbitration)

Artur Kowalski (Poland, Pub. Int'l)

Jeffrey D. Kovar (Pub. and Private Int'l Law)

Karin Landgren (Children)

Arnold H. Leibowitz (Immigration)

Frankie F.L. Leung (Hong Kong)

John Linarelli (Int'l Public Procurement)

Keith N. Loken (Int'l Econ. Law)

Jim Lvnch (Int'l Tax)

Pedro J. Martinez-Fraga (Int'l Litigation)

Andrew Mitchell (WTO)

Saira Mohamed (Int'l Human Rights) Jason Morgan-Foster (ICJ, ILC) Daryl A. Mundis (ICC, ICTR, ICTY)

Boldizsár Nagy (Hungary)

Michael O'Boyle (European Court of Human Rights)

Jason Palmer (Pub. Int'l) Eric Pelofsky (Int'l Orgs.) Fabrizio Pagani (OECD)

John R. Pate (Andean Community of Nations)

T. Michael Peay (Pub. Int'l)

Hernan Perez-Loose (Int'l Investment)

Ryan Phair (Pub. Int'l) Shawn Pompian (Int'l Trade) Charles H. Poncet (Switzerland) Amelia B. Porges (WTO)

Norman Printer (Int'l Humanitarian)
Vikram Raghavan (World Bank)
Heiko Recktenwald (German, WIPO)

August Reinisch (European Law) Kenneth M. Rosen (Reg. Int'l Bus.)

Timothy Rudy (OAS)

Ewa Sakiewicz-Munnerlyn (Poland)

Gerald S. Schatz (Bio-Medical Ethics/Health) Richard F. Scott (International Energy Agency)

Jeremy Sharpe (Int'l Dis. Res.) William Slomanson (Pub. Int'l) Henri Smets (Int'l Env. Law, OECD)

Stefaan Smis (Belgium) Brigitte Stern (France)

Sompong Sucharitkul (Southeast Asia and the Pacific)

Jiri Toman (Law of War)

Antônio Augusto Cançado Trindade (Brazil, IACHR)

Alexander Umole (Nigeria, IBT) Kim Van der Borght (Belgium) Jorge A. Vargas (Mexico)

Manuel E. Ventura-Robles (IACHR)

Thomas W. Wälde (Energy Law, Int'l Investment)

Rebecca M.M. Wallace (United Kingdom)

John Wilson (Private Int'l Law) Rick Wilson (Human Rights)

Anthony Winer (Caspian Sea, Corruption)

Yozo Yokota (Japan)

Simon Young (Money Laundering)

Alberto Zuppi (Int'l Crim.)

## INTERNATIONAL LEGAL MATERIALS

## Volume 48 — No. 2 — 2009

— Contents —

	Introductory Note by Chiara Giorgetti	. 199
	Siemens AG — Violations of the Foreign Corrupt Practices Act Introductory Note by Alexandra Wrage and Anne Richardson	. 232
	Special Agreement Between Belize and Guatemala Introductory Note by John R. Crook	. 250
	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights Introductory Note by Tara J. Melish	. 256
	International Court of Justice: Croatia v. Serbia Introductory Note by Jamey Harris	. 268
	The European Court of Human Rights: S. & Marper v. U.K. Introductory Note by Gerald S. Schatz	. 308
	Protocol on the Statute of the African Court of Justice and Human Rights Introductory Note by Olufemi Elias	. 334
	Convention on Cluster Munitions Introductory Note by Louis Maresca	. 354
	U.S. Directive on Arctic Policy and the Ilulissat Declaration Introductory Note by Evan T. Bloom	. 370
	European Court of Justice: Klaus Bourquain Introductory Note by Gerardo Badillo Hermoso	. 384
	President Obama's Executive Orders on Guantánamo Bay, Interrogation and Detention Introductory Note by John Radsan	. 394
	International Criminal Court: Summary of the Prosecutor's Application under Article 58 Introductory Note by Milena Sterio	. 406
	Group of Twenty & Group of Thirty Introductory Note by Kathleen A. Scott	. 413
BR	IEFLY NOTED	. 459
RF	RESOLUTIONS	

### **VOLUME 48 — NUMBER 2**