sities of Kiel, Zurich, Berlin, London, Birmingham and, in 1991, Oxford. He was an Honorary Member of the American Society of International Law.

Readers of this *Journal* will know Mann not so much as a practitioner or teacher but as a scholar. Over some fifty years, Mann produced a stream of articles, notes and book reviews that centered on the interrelationship of international and national law. His *Studies in International Law* (1973) brought together twenty-one of those essays, and was awarded the Society's Certificate of Merit. In 1990, it was supplemented by *Further Studies in International Law,* which contains another seventeen essays. He also wrote extensively, in English and German, on the conflict of laws, comparative law, the law of arbitration, expropriation, and monetary law. Mann gave four courses of lectures at the Hague Academy of International Law, and was the author of *Foreign Affairs in English Courts* (1986) and another half-dozen legal works in German, as well as many diverse articles and scores of case notes. Some articles dealt with questions of public policy, such as fusion of barristers and solicitors, which Mann opposed, and European monetary union, of which he was a strong critic. As of 1977, Mann had written 239 book reviews in legal publications (they are listed in an appendix, together with a list of his other voluminous writings as of that time, in a *Festschrift* in German and English, *International Law and Economic Order: Essays in Honour of F. A. Mann on the Occasion of His 70th Birthday,* edited by Werner Flume, Hugo J. Hahn, Gerhard Kegel and Kenneth R. Simmonds).

A book review by Mann—even one of hundreds—was no exercise in bland summary. Mann's lucid English prose was as piercing as his mind. He was mordant; he took it as the duty of a critic to criticize. His case notes were no less exacting. Mr. Justice Hoffmann recounts in *The Guardian* of September 20, 1991, that "[l]ast year a member of the House of Lords confessed to me that he felt nervous at seeing him [Mann] listening to argument in the Committee Room. He could foresee that any shortcomings in his judgment would be remorselessly exposed in the next number of the *Law Quarterly Review.*" Mann's crisp and committed style ran throughout his extensive publications. Mann was a man of convictions, of strong views, and of a capacity for moral indignation. His writings were, if not opinionated, certainly combative. They were marked by an extraordinary acuity, which was as enlightening as it was stimulating. His conversation was no less enlivening.

Mann was as committed to family and friends as to his convictions. A man of flinty integrity and engaging charm, he was exceptionally cultured, especially in music and literature. "Of all my learned friends," Lord Denning wrote in his book *The Due Process of Law* (1980), "Francis Mann is the most learned of all."

The stimulus of his remarkable mind and character will be missed.

STEPHEN M. SCHWEBEL*

CORRESPONDENCE

The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters should be published and to edit any letters printed. Letters should conform to the same format requirements as other manuscripts.

* Judge of the International Court of Justice.

TO THE EDITOR IN CHIEF:

It is always gratifying to see that one's work has been reviewed in the AJIL. In my case, *Terrorism, Politics and Law* (1989)—a book whose declared audience was the general nonprofessional public—was the subject of an unusually long and heavily footnoted review, by Professor Malvina Halberstam (85 AJIL 410 (1991)). Unfortunately, the review is flawed by quite a few misconceptions and a distinct bias. I therefore feel obliged to respond to the reviewer's critical comments.

I shall start with *Professor Halberstam's general remarks.* She notes that "the book recapitulates the events from the perspective of one clearly sympathetic to the PLO and highly critical of the United States" (p. 410). I have the impression that Professor Halberstam divides the world into two categories: the wicked (those in favor of the PLO and against the United States) and the good (those taking a contrary stand). Without entering into a discussion of this Manichaean vision, I wish to state that my general view is as follows: each of us has his or her political and ideological leanings. However, as scholars, we have two duties: (1) to spell out as clearly as possible these leanings, so as to allow the reader to check to what extent they influence our scientific investigation; and (2) to do our utmost to prevent these leanings from conditioning a sound scholarly view of facts and laws (cf. my book *International Law in a Divided World,* pp. 3–4 (1986)). Let me show how I have tried to be consistent with these principles as regards the two charges leveled by the reviewer.

As for my alleged bias in favor of the PLO, I shall simply quote the following passages from my book:

> The *Achille Lauro* affair taught us another lesson: *terrorism has a profoundly adverse impact on the international community.*
>
> First and foremost for the obvious reason that it poses a constant threat to the lives of innocent people. Terrorism—at least in the form often used by national liberation movements—has another extremely pernicious side to it: it is inspired by ideologies *tainted with racism.* Once the hijackers took over the *Achille Lauro* . . . , they picked out not only the American and British citizens, but also all those who were Jewish, whatever their nationality. Their choice of Leon Klinghoffer as their first victim has prompted one commentator (F. Gerardi) to say that probably none of these young Palestinians realized that "their horrible criterion for selecting the hostages [was] identical to that which led to the holocaust in the Nazi concentration camps." So racist a choice was hardly new, as Shimon Peres, the then Israeli Prime Minister, pointed out on 11 October 1985. The same had occurred on the TWA plane, hijacked on 13 June 1985, when the terrorists "separated Jews from non-Jews, even though there had been no Israelis on board. And on the [Air France] plane [hijacked] to Entebbe [in 1976] they did likewise." (pp. 139–40)
>
> [T]he whole *Achille Lauro* incident has pointed to a sad truth: the most credible national liberation movement and the one most widely "recognized" by the international community, *has proved unsuccessful at standing as a valid counterpart for sovereign states* . . . . Thus, terrorism has proved to be a losing card even for the most "accepted" non-state "player" on the international scene. (p. 142)

I hope that the above quotes will enable the reader to judge the extent to which my support of the Palestinians' right to self-determination has affected my evaluation of their role in this affair.

As for my alleged anti-Americanism, what Professor Halberstam has mistakenly taken for bias simply boils down to a series of critical remarks against the attitude of the United States in this affair (see pp. 55–81 of my book). My view is that a

superpower such as the United States, which upholds democracy and the rule of law, should not react to a heinous crime of terrorism by breaching the law in its turn. The United States acted against international law both when it intercepted an Egyptian aircraft and when two U.S. military planes overflew, unauthorized, Italian territory. If one were to adopt Professor Halberstam's logic, one would be accusing many distinguished U.S. international lawyers of anti-Americanism, for they have occasionally criticized practices they regard as U.S. breaches of international law.

Let me now consider the *specific critical remarks* made by the reviewer.

(1) She lists (p. 410) an array of relevant issues that, according to her, were inadequately or not treated in my book. "Did Italy violate the Hostage Convention [of 1979]?" is one example she mentions. I did not deal with that issue since at the relevant time Italy *had not yet ratified the Convention* (see p. 143 of my book).

(2) Whether the seizure of the *Achille Lauro* constituted piracy under international law is, of course, a central issue. I listed the three well-known conditions for piracy and illustrated the "private ends" test by suggesting that "the purpose of [the putative pirates' action] must be to seize merchandise they find on the ship they assault; in other words, they must act 'for private ends' " (p. 69). The reviewer makes much of this formulation and reserves for it some of her harshest criticism, alleging that private ends need not necessarily be only seizure of merchandise. One can perhaps imagine all kinds of actions other than seizure of goods that could come under the definition of private ends—though I would be glad to learn of one real-life example. But surely the important issue—with which I dealt extensively in my book—is not the best formulation of the private ends test but whether the seizure of the Italian ship satisfied any of the three conditions and could thus be characterized as piracy. No matter what the best explication of the private ends test, could the seizure of the Italian ship be said to further such private ends? Did the action of the hijackers satisfy the other prongs of the test? These were the crucial issues and on them the reviewer is silent.

(3) Professor Halberstam then contends that I did not even discuss the breach by Egypt of the 1979 Hostage Convention "as a possible justification for the U.S. action in forcing the [Egyptian] plane carrying the hijackers to land in Italy" (p. 412). She once more raises a pseudoproblem that I refrained from addressing for the simple reason that it is indisputable that a breach of a treaty not amounting to an illegal use of force cannot authorize resort to force by the aggrieved party. The prescriptions of Article 51 of the UN Charter are fairly clear, at least on this point. Why should I have spent pages and pages on an issue that is not controversial in present international law?

(4) The reviewer states that I fail "to mention that the PLO did not in fact try Abul Abbas, and that, although he was subsequently convicted in Italy in absentia, Italy had not obtained his extradition" (p. 412). If Professor Halberstam had been a conscientious reader, she would have found, at p. 141 of my book, the following comments: "[O]nly recently, Abul Abbas told the press that he had not been disowned by the leaders of the PLO for the hijacking of the Italian liner, let alone 'punished' in accordance with the [Palestinian] Revolutionary Penal Code."

(5) Professor Halberstam then complains that I did not discuss the question whether Italy had the right to try the hijackers after their illegal seizure by the Americans; she laments in particular that I refrained from examining the "relevant international law." Here, the reviewer shows again her marked penchant for nonexistent problems. The question of the illegality of the capture of alleged criminals has so far arisen in municipal law and in international law when the enforcement officials apprehending a suspect abroad belonged to the country where the person concerned was brought to trial. It is in these cases that national courts ask themselves whether they may try the accused notwithstanding his illegal

apprehension. By contrast, whenever the alleged criminal is brought *by other states* to the territory of a state having jurisdiction over him, it does not matter whether or not the officials of the apprehending state breached the law: what matters is that the person concerned be on the territory of the prosecuting state. This is borne out in our case: the breach of international law by the United States vis-à-vis Egypt resulting from the taking of the Palestinians to Italy did not entail any legal consequence as regards Italy's criminal jurisdiction over the terrorists.

(6) The reviewer attacks my discussion of the conditions under which people fighting on behalf of a national liberation movement (in this case on behalf of a faction of the PLO) can be regarded as legitimate conbatants instead of terrorists (pp. 104–07 of my book). She points out that, in any case, the *Achille Lauro* belonged to a state (Italy) that was not party to the armed conflict. Of course, I was aware of this simple fact. I discussed the problem to expose the purpose of Abul Abbas. He claimed that the group of Palestinians he controlled intended to attack Israeli troops on Israeli territory. In other words, it intended to perform a "military action" against a military objective; this action, if the necessary conditions had been met, might have amounted to a *belligerent action.* However—so the astute argument of Abul Abbas goes—the group was "forced" to hijack the Italian liner. I agree instead with the findings of the Italian courts that the hijacking was from the outset a *terrorist* act.

(7) The reviewer attacks my remarks about the Egyptian holding of the *Achille Lauro* in Port Said and observes that she knows of "no rule that allows a state to hold a ship, its crew and its passengers 'prisoner' " (85 AJIL at 413). In actual fact, Article 27 of the 1982 Law of the Sea Convention, restating customary international law, allows the coastal state to retain a ship for the purpose of conducting an investigation in connection with those crimes committed on board the ship that affect the coastal state or are of a kind to disturb the peace of the country. Since no time limit is set by international law for such holding of foreign ships, plainly Egypt claimed that it was authorized to hold the *Achille Lauro* for the purpose of inquiring into the hijacking (while in fact it was trying to put pressure on Italy for the release of the Egyptian aircraft).

(8) The reviewer also contends that I did not indicate why the PLO should not be held responsible for the hijacking. I thought that I had stated my views clearly, on pp. 141–42 of my book, where I exposed the ambiguity of the PLO's leader.

Finally, let me note regrettably that the reviewer did not critically appraise my attempt to explore a complex international issue from various angles (legal, historical, political), in hopes of introducing into Europe an approach that in the United States has produced outstanding books (suffice it to cite here just one: the seminal work by Louis Henkin, *How Nations Behave: Law and Foreign Policy* (2d ed. 1979)).

ANTONIO CASSESE

Professor Halberstam replies:

Thank you for the invitation to respond to Professor Cassese's letter. The spatial limitations do not permit a full response to such a long letter. I will briefly address each of his specific allegations, and let the review speak for itself on the rest.

Professor Cassese objects to my statement that "the book recapitulates the events from the perspective of one clearly sympathetic to the PLO and highly critical of the United States." Yet even this letter demonstrates his pro-PLO position. In the passage he quotes to show that he has no such bias, he refers to the PLO as "the most credible national liberation movement and the one most widely recognized by the international community."

Turning to Cassese's specific claims:

Cassese's Point 1. Although Italy did not ratify the Hostage Convention till 1986, it had signed it and under Article 18 of the Vienna Convention was "obliged to refrain from acts which would defeat the object and purpose of [the] treaty" until it "made its intention clear not to become a party to the treaty." While Italy was not obligated to extradite Abul Abbas under the Hostage Convention, it may well have been obligated to prevent his departure, particularly since it not only intended to, but did ratify the Hostage Convention shortly thereafter. Furthermore, Italy had an extradition treaty with the United States under which the United States had in fact requested the extradition of the hijackers. The question I posed, as one of a series of questions that might have been, but were not, discussed in the book, was "Did Italy violate *the Hostage Convention or its extradition treaty with the United States* by releasing Abul Abbas despite U.S. requests for his extradition?" (85 AJIL at 410 (emphasis added)).

Cassese's Point 2. As I noted in the review, quoting the International Law Commission, "private ends" includes acts "prompted by feelings of hatred or revenge." Under this interpretation, it is arguable that the *Achille Lauro* seizure was piracy. A fuller analysis of the question may be found in my article at 82 AJIL 269 (1988).

Cassese's Point 3. The question whether Egypt's breach of the Hostage Convention justified the U.S. action forcing the plane carrying the hijackers to land in Italy is not a "pseudo-problem"; nor was the U.S. action a clear violation of "the prescriptions of Article 51 of the UN Charter," as Cassese argues. Article 51 provides an exception to the provision in Article 2(4), that "all members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state." While this is not the place to explore the issue in depth, it is at least arguable that forcing the plane to land in Italy was not a violation of the territorial integrity or political independence of either Italy or Egypt. It was not done in the territory of Egypt and Italy gave its consent. Further, in my view, it is simply not correct that the issue "is not controversial in present international law"—by which I assume Cassese means that everyone agrees—that a state may not use even *limited* force to prevent the escape of persons who have held its nationals hostage and killed one of them, even where the state assisting in their escape does so in violation of its treaty obligations to extradite or prosecute.

Cassese's Point 4. The point of my comment was not that Cassese was unaware that Abbas, whom Italy released despite U.S. protests, has not been tried by the PLO and has not been extradited to Italy, but that Cassese ignored those facts in arguing that there was no need for the United States to force the plane carrying the hijackers to land in Italy because (1) Italy intended to ask for the hijackers' extradition, and (2) Arafat had given assurance that the PLO would try to punish those responsible. That Cassese refers in another part of the book to the fact that Abbas has not been tried does not negate my criticism, and may in fact strengthen it, since it underlines his failure to consider it in this context.

Cassese's Point 5. In response to my statement that one of the interesting questions raised by the *Achille Lauro* incident was Italy's right to try the hijackers after their illegal (according to Cassese) seizure (p. 412), Cassese asserts that the question only arises if the seizure is by persons of the state in which the offender is brought to trial but not if it is by persons of a third state. He offers no support for that proposition. While I think it is an open question whether international law prohibits a state from asserting criminal jurisdiction over an offender who is brought into the state illegally, if one takes the position that it does, the proscription should not depend on whether the seizure was by agents of that state or by agents of another state who brought the offender into that state. The purpose of

such a rule would be equally undermined whether the seizure is by agents of that state or of another. In the United States, limitation of the exclusionary rule to evidence seized by agents of the *same* jurisdiction—known as the silver platter doctrine—was rejected many years ago.

It should be emphasized that I do not now and did not in my review take a position on the merits on this or on any of the other points raised by Cassese. I stated that I thought they were interesting questions raised by the *Achille Lauro* incident and its aftermath that were not discussed or adequately discussed in the book.

Cassese's Point 6. The review does not attack his "discussion" of the conditions under which members of a national liberation movement may be regarded as legitimate combatants. It criticizes him for chiding the Italian judges on this point (quoted at pp. 412–13 of the review) and *not* discussing the issue. After quoting his statement, the review states, "[w]hether, and the extent to which, members of national liberation movements should be treated as combatants is a very controversial question. Yet, there is no further discussion of the issue" (p. 413).

Cassese's Point 7. After quoting Cassese's argument that Egypt was "merely applying the international rules on foreign ships in a state's territorial waters," in refusing to allow the *Achille Lauro* to leave for Italy, I state in the review,

> I know of no rule that allows a state to hold a ship, its crew and its passengers "prisoner," *merely because the ship is in that state's territorial waters, in order to compel the flag state to release those who concededly had hijacked the ship, held its crew and passengers hostage, and killed one of them. Egypt could, of course, hold the ship for a reasonable period to conduct an investigation of the matter. But, if it used that as a pretext to force Italy to release the hijackers, it was acting unlawfully.* (p. 413 (emphasis added))

In his letter, Cassese quotes the unitalicized part of the first sentence only, ignores the rest, and argues that international law "allows the coastal state to retain a ship for the purpose of conducting an investigation in connection with those crimes committed on board the ship that affect the coastal state or are of a kind to disturb the peace of the country." As Cassese concedes in his letter, Egypt was not holding the ship for purposes of investigation, but to "put pressure on Italy for the release of the Egyptian aircraft." Thus, its action was not justified by the rule he now cites.

I hope this shows, insofar as possible in the limited space I have been given, that the review is not flawed by "quite a few misconceptions." I will not respond to Cassese's *ad hominem* attacks, but I would note that nowhere in his long letter does Cassese support them by citing a single word *in my review* showing bias.