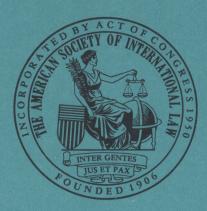
# American Journal of International Law

October 2001 Vol. 95 No. 4

## LIBRARY

JAN 2 4 2002

THE AMERICAN SOCIETY OF INTERNATIONAL LAW



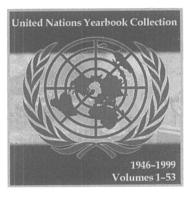
**Published by** 

The American Society of International Law

# Novv available!

# **United Nations Yearbook Collection**

The United Nations Yearbook has been the primary reference work on the Organization since 1946. For the first time, this valuable collection of more than fifty years worth of Yearbooks is available on CD-ROM.



## **Key Features:**

- Includes every volume published (1946-1999) a total of 53 volumes (59,472 pages) on just two CD-ROMs
- The Collection can be searched across all available volumes using index search or within any particular yearbook using full text search
- All volumes presented in this Collection are in Portable Document Format (PDF) and are identical to those in print format
- The Collection will be updated annually

### The Yearbook is an indispensable reference tool for anyone seeking information on the UN system and its related organizations.

<u>Institutional Rates</u>	Individual Rates
500.00	250.00
1000.00	500.00
	200100



#### **United Nations Publications**

Sales and Marketing Section, Room DC2-0853, Dept.A306, New York, NY 10017 Tel. (800) 253-9646, (212) 963-8302 Fax. (212) 963-3489 E-Mail: publications@un.org Internet: http://www.un.org/publications Visa, MC and AMEX accepted.

## AMERICAN JOURNAL OF INTERNATIONAL LAW

**VOL. 96** 

#### October 2002

NO. 4

#### CONTENTS

PAGE

#### Symposium: The ILC's State Responsibility Articles

#### Edited by Daniel Bodansky and John R. Crook

After years of work and controversy, the International Law Commission has completed its articles on state responsibility, a fundamental concept of international law. The contributors to this symposium probe the basic premises of the Commission's work, examine central issues of invocation, countermeasures, and remedies, and weigh the authority and future relevance of the articles.

Introduction and Overview	Daniel Bodansky and Jo	hn R. Crook	773
The ILC and State Responsibility		t Rosenstock	792
Invoking State Responsibility in the Twenty-	first Century Edith I	Brown Weiss	798
Counterintuiting Countermeasures	•	J. Bederman	817
Righting Wrongs: Reparations in the Article		,	
	- ,	inah Shelton	833
The ILC Articles on State Responsibility: Th	e Paradoxical Relations	hip	000
Between Form and Authority		id D. Caron	857
The ILC's Articles on Responsibility of State	es for Internationally		
Wrongful Acts: A Retrospect		es Crawford	874
		-	
Editorial Comments			
The Taliban, Al Qaeda, and the Determinat			
		e H. Aldrich	891
Inspections and Their Enforcement: A Mod	est Proposal Thoma	s M. Franck	899
Notes and Comments			
The Security Council Starts Legislating	Pa	uul C. Szasz	901
Jus ad Bellum and Jus in Bello After Septembe	er 11 Steve	en R. Ratner	905
Current Developments			
The Second Review Conference of the 1980	Convention on Certain		
Conventional Weapons	David Kaye and Steven		922
International Decisions	Edited by Bernard	l H. Oxman	
Decision Regarding Communication 155/96 (Soc	ial and Economic Rights Ac	ction Center/	
Center for Economic and Social Rights v. Nigeri		,	937
African Commission on Human and Peoples	s' Rights decision on huma	n rights	
violations in connection with oil developme	nt operations		

Pretty v. United Kingdom (M. A. Sanderson) European Court of Human Rights judgment on assisted suicide	943
Kingdom of the Netherlands v. European Parliament & Council of the European Union (Juliane Kokott and Thomas Diehn) European Court of Justice decision regarding effect on biotechnology directive of European Patent Convention, TRIPS & TBT Agreements, and Biodiversity Convention	950

#### Contemporary Practice of the United States Relating to International Law

Edited by Sean D. Murphy	
Efforts to Address Iraqi Compliance with UN Weapons Inspections	956
U.S. Funding for the UN Population Fund	962
U.S. Expulsion of Iraqi Diplomat	963
FSIA Terrorist-Exception Cases in 2002	964
ICTY Subpoena of Washington Post Journalist	967
U.S. Reaction to Russian Continental Shelf Claim	969
U.S. View on Pursuing a Torture Convention Protocol on Preventive Visits	970
Senate Consideration of CEDAW	971
Hate-Speech Protocol to Cybercrime Convention	973
American Servicemembers' Protection Act	975
Imposition of U.S. Tariffs on Steel Imports	977
Trade Developments Between the United States and Sub-Saharan Africa	978
2002 Enactment of Trade-Promotion Authority	979
U.S. Nationals Detained as Unlawful Combatants	981

#### Recent Books on International Law Review Essay

Edited by Richard B. Bilder

Pogge, Thomas W. (ed.). Global Justice (Joel P. Trachtman)	984
Book Reviews	
Koskenniemi, Martti. The Gentle Civilizer of Nations: The Rise and Fall of Interna- tional Law 1870–1960 (A. W. Brian Simpson)	995
Zawati, Hilmi M. Is Jihād a Just War? War, Peace and Human Rights Under Islamic and Public International Law (M. Cherif Bassiouni)	1000
McDonald, Gabrielle Kirk, and Olivia Swaak-Goldman (eds.). Substantive and Procedural Aspects of International Criminal Law: The Experience of International and National Courts (Jordan J. Paust)	1006
Malloy, Michael P. United States Economic Sanctions: Theory and Practice (John Ellicott)	1009
Joelson, Mark R. An International Antitrust Primer: A Guide to the Operation of the United States, European Union, and Other Key Competition Laws in the Global Economy (Susan L. Karamanian)	1012
Trouwborst, Arie. Evolution and Status of the Precautionary Principle in Interna- tional Law (Sumudu Atapattu)	1016
Books Received	1019
International Legal Materials. Contents, Vol. XLI, No. 5 (September 2002)	1022
Table of Cases	1023
Index	1025

#### THE BOARD OF EDITORS RECORDS WITH GREAT SADNESS THE DEATH, ON SEPTEMBER 7, 2002, OF JONATHAN I. CHARNEY, AJIL CO-EDITOR IN CHIEF

#### **BOARD OF EDITORS**

Editor in Chief W. MICHAEL REISMAN Yale Law School

JOSÉ E. ALVAREZ Columbia University School of Law DAVID J. BEDERMAN Emory University School of Law DANIEL BODANSKY University of Georgia School of Law CHARLES N. BROWER The Hague, Netherlands DAVID D. CARON University of California at Berkeley School of Law HILARY CHARLESWORTH Australian National University CHRISTINE M. CHINKIN London School of Economics JOHN R. CROOK Washington, D.C. JOAN FITZPATRICK University of Washington School of Law ROBERT E. HUDEC Fletcher School of Law and Diplomacy 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 at Berkeley **ANNE-MARIE SLAUGHTER Princeton University JOEL P. TRACHTMAN** Fletcher School of Law and Diplomacy PETER D. TROOBOFF Washington, D.C. RUTH WEDGWOOD Yale Law School EDITH BROWN WEISS Georgetown University Law Center

#### CHARLOTTE KU, ex officio

#### Honorary Editors

GEORGE H. ALDRICH The Hague, Netherlands RICHARD B. BILDER University of Wisconsin Law School THOMAS BUERGENTHAL The Hague, Netherlands RICHARD A. FALK **Princeton University** TOM J. FARER University of Denver Graduate School of International Studies THOMAS M. FRANCK New York University School of Law LOUIS HENKIN Columbia University School of Law JOHN H. JACKSON Georgetown University Law Center ANDREAS F. LOWENFELD New York University School of Law THEODOR MERON The Hague, Netherlands

> Senior Associate Editor ANNA ASCHER

> > Managing Editor CARA M. SMITH

JOHN NORTON MOORE University of Virginia School of Law 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

Associate 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 any 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). The Society is incorporated by Act of Congress approved September 20, 1950 (64 Stat. 869).

#### **OFFICERS OF THE SOCIETY, 2002–2003**

Honorary President	
Past Presidents: Charles N. Brower, Thomas M. Franck, Louis Henkin, Covey T. Oliver, William D. Rogers, Arthur W. Rovine, Oscar Schachter, Louis B. Sohn, Peter D. Trooboff, Edith Brown Weiss	
Honorary Vice Presidents: CHARLES N. BROWER, THOMAS M. FRANCK, ARTHUR W. ROVINE	
Counsellors: ROSEMARY BARKETT, RICHARD B. BILDER, IAN BROWNLIE, JAMES H. CARTER, HILARY CHARLESWORTH, LORI FISTER DAMROSCH, CONRAD HARPER, RITA F. HAUSER, ROSALYN HIGGINS, JOHN H. JACKSON, SUSAN L.	

LORI FISLER DAMROSCH, CONRAD HARPER, RITA E. HAUSER, ROSALYN HIGGINS, JOHN H. JACKSON, SUSAN L. KARAMANIAN, MARTTI KOSKENNIEMI, MICHAEL J. MATHESON, JOHN NORTON MOORE, VED P. NANDA, SANDRA DAY O'CONNOR, W. MICHAEL REISMAN, SEYMOUR J. RUBIN, STEPHEN M. SCHWEBEL, JEROME SHESTACK, CHRISTOPHER WEERAMANTRY, EDWIN D. WILLIAMSON, DIANE P. WOOD

Secretary	FREDERIC L. KIRGIS
Treasurer	JOSEPH GUTTENTAG
Assistant Treasurer	. NANCY L. PERKINS

DOMINGO E. ACEVEDO GERALD AKSEN ARTHUR R. ALBRECHT TEYMOUR A. ALIREZA FRANK A. BAUMAN MRS. RICHARD BAXTER\* DAVID J. BEDERMAN AND LORRE B. CUZZE DANIEL L. BETHLEHEM JOHN A. BOYD CHARLES N. BROWER IAN BROWNLIE RODMAN R. BUNDY DAVID D. CARON JAMES H. CARTER JAMES RICHARD CRAWFORD ANTHONY D'AMATO LORI FISLER DAMROSCH AND JEAN BAUER FISLER ARTHUR H. DEAN\* ELI WHITNEY DEBEVOISE II SARAH WHITCRAFT DEFORD\* EDWARD DUMBAULD\* RICHARD W. EDWARDS, JR. ALONA E. EVANS\* THOMAS M. FRANCK ALWYN V. FREEMAN\*

#### PATRONS OF THE SOCIETY

JOHN KING GAMBLE RONALD E. M. GOODMAN KATHERINE GOROVE CHRISTOPHER J. GREENWOOD JOHN LAWRENCE HARGROVE VICTORIA M. HARIRI RITA E. HAUSER JOHN N. HAZARD\* ALICE AND LOUIS HENKIN KEITH HIGHET\* HOWARD M. HOLTZMANN CHARLES A. HUNNICUTT RICHARD A. JOHNSON SUSAN L. KARAMANIAN FREDERIC L. KIRGIS CHARLOTTE KU JENNIFER LAKE AND DONALD FRANCIS DONOVAN JEFFREY LANG ELIHU LAUTERPACHT ROY S. LEE MRS. RICHARD LILLICH VAUGHAN A. LOWE BRUNSON MACCHESNEY\* EDWARD WATSON MCWHINNEY HUSAM MESHAL

W. ROBERT MORGAN\* VED P. NANDA BERNARD H. OXMAN HERMAN PHLEGER\* W. MICHAEL REISMAN ANDRES RICO DAVIS R. ROBINSON WILLIAM D. ROGERS ARTHUR W. ROVINE SEYMOUR J. RUBIN PHILIPPE J. SANDS OSCAR SCHACHTER STEPHEN M. SCHWEBEL ANNE-MARIE SLAUGHTER EARL A. SNYDER ERIC STEIN JOHN R. STEVENSON\* **ENRIQUE P. SYQUIA** GENEVIEVE E. TILLAR\* PETER D. TROOBOFF DETLEV F. VAGTS JILL MCCLANAHAN WATSON **RUTH WEDGWOOD** BURNS H. WESTON EDWIN D. WILLIAMSON BASIL S. YANAKAKIS

#### \* deceased

Alexander Freeman Arthur K. Kuhn

#### In Memoriam

HENRY C. MORRIS

JAMES BROWN SCOTT STANLEY P. SMITH

#### 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, DC. Such contributions are deductible from federal returns for income, estate, and gift tax purposes.

#### **ORDERS AND INQUIRIES**

Subscriptions, Back Issues, and Cumulative Indexes: 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 for nonmembers is \$165 (\$200 outside U.S.). Inquiries should be sent to the American Journal of International Law, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864; Fax: (202) 797-7133. Annual subscription orders should be sent to P.O. Box 164, Washington, DC 20055-0164. Order forms and other information are available online at <a href="http://www.asil.org">http://www.asil.org</a>. Claims for undelivered issues must be made in writing to the Society within three months of the mailing date specified online at <a href="http://www.asil.org/claims.htm">http://www.asil.org/claims.htm</a>. Volumes 1 (1907) to date are available from William S. Hein & Co., 1285 Main Street, Buffalo, NY 14209-1987, USA, toll-free (800) 828-7571. Cumulative indexes are also available from Hein: 1941–1960, 1961–1970, 1971–1980, and 1981–1990.

#### *AJIL* is also available in nonprint forms:

- Online, through: Mead Data Central, Inc., provider of the LEXIS<sup>®</sup>/NEXIS<sup>®</sup> services, P.O. Box 933, Dayton, OH 45401, USA, toll-free (800) 227-9597; and West Publishing Company, provider of WESTLAW<sup>®</sup>, P.O. Box 64526, St. Paul, MN 55164-0526, USA, 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 <a href="http://www.jstor.org">http://www.jstor.org</a> for a current list of institutional subscribers.
- On microform, from: William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209, USA, toll-free (800) 828-7571; and University Microfilms, 300 North Zeeb Road, Dept. P.R., Ann Arbor, MI 48106, USA, 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  $25^{\circ}$  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: 0002-9300/02 \$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) 939-6000; 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., NW, Washington, DC 20008-2864.

#### AMERICAN JOURNAL OF INTERNATIONAL LAW

The views expressed in the articles, editorial comments, book reviews, 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, at the American Society of International Law, 2223 Massachusetts Avenue, NW, Washington, DC, 20008-2864, USA, or by e-mail to AJIL@ASIL.org. 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, NW, 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 csmith@ 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 © 2002 by The American Society of International Law Printed by Cadmus Professional Communications, Linthicum, MD 21090