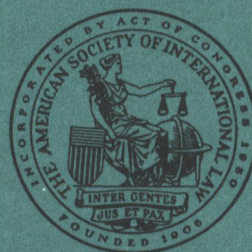


*American
Journal of
International
Law*

July 1991

Vol. 85 No. 3



Published by

American Society of International Law

PATRONS OF THE SOCIETY

ARTHUR H. DEAN (deceased)
HERMAN PHLEGER (deceased)
GENEVIEVE E. TILLAR (deceased)
W. ROBERT MORGAN
BRUNSON MACCHESNEY (deceased)
ALONA E. EVANS (deceased)
JOHN N. HAZARD
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.
HUSSAM ALMESHAL
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

In Memoriam

DR. JAMES BROWN SCOTT
HENRY C. MORRIS

ARTHUR K. KUHN
ALEXANDER FREEMAN

STANLEY P. SMITH

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) and Leo Gross (1986).

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. Annual subscription rate to nonmembers is \$75.00, plus \$5.00 postage outside U.S.A. Available back numbers of AJIL will be supplied at \$27.50 each.

EDITORIAL OFFICE:

NEW YORK UNIVERSITY SCHOOL OF LAW
40 WASHINGTON SQUARE SOUTH
NEW YORK, N.Y. 10012

BUSINESS OFFICE:

2223 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20008-2864

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

Copyright © 1991 by The American Society of International Law
Printed by Lancaster Press, Lancaster, Pa. 17603

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 85

July 1991

NO. 3

CONTENTS

	PAGE
"Binding" Advisory Opinions of the International Court of Justice	
<i>Roberto Ago</i>	439
United Nations Law in the Gulf Conflict	
<i>Oscar Schachter</i>	452
A Law of the Future or a Law of the Past? Modern Tribunals and the International Law of Expropriation	
<i>Patrick M. Norton</i>	474

Agora: The Gulf Crisis in International and Foreign Relations Law, Continued	
Until What? Enforcement Action or Collective Self-Defense?	
<i>Eugene V. Rostow</i>	506
Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy	
<i>Burns H. Weston</i>	516

Notes and Comments

Correspondence	536
The Francis Deák Prize	538

Contemporary Practice of the United States Relating to International Law

Marian Nash Leich 539

International Decisions

Keith Highet & George Kahale III 552

Book Reviews and Notes

Edited by Detlev Vagts

Mazzeschi, Riccardo Pisillo. <i>"Due diligence" e responsabilità internazionale degli stati</i> (Gabe Shawn Varges)	568
Miserez, Diana (ed.). <i>Refugees—The Trauma of Exile: The Humanitarian Role of Red Cross and Red Crescent</i> (David Carliner)	569
Suganami, Hidemi. <i>The Domestic Analogy and World Order Proposals</i> (Terry Nardin)	571
Schrag, Philip G. <i>Listening for the Bomb: A Study in Nuclear Arms Control Verification Policy</i> (Burrus M. Carnahan)	572
McMillan, Stuart. <i>Neither Confirm Nor Deny: The Nuclear Ships Dispute between New Zealand and the United States</i> (Dennis R. Neutze)	574
Long, William J. <i>U.S. Export Control Policy: Executive Autonomy vs. Congressional Reform</i> (Douglas E. Rosenthal)	577
Sieghart, Hans, Ivo G. Caytas and Julian I. Mahari. <i>Global Political Risk: Dynamic Managerial Strategies</i> (Louis T. Wells, Jr.)	578
Pijpers, Alfred, Elfriede Regelsberger and Wolfgang Wessels (eds.). <i>European Political Cooperation in the 1980s: A Common Foreign Policy for Western Europe?</i> (William J. Davey)	579
Pirrotte, Olivier, Pascal Girerd, Pierre Marsal and Sylviane Morson. <i>Trente ans d'expérience euratom: la naissance d'une Europe nucléaire</i> (Mohamed ElBaradei)	581
Benedettelli, Massimo V. <i>Il giudizio di eguaglianza nell'ordinamento giuridico delle Comunità Europee</i> (Chiara Zilioli)	582

Osherenko, Gail, and Oran R. Young. <i>The Age of the Arctic: Hot Conflicts and Cold Realities</i> (Christopher C. Joyner)	584
<i>International Commercial Arbitration and the Courts</i> (William W. Park)	586
<i>The 1989 Guide to International Arbitration and Arbitrators</i> (William W. Park)	587
Heidenberger, Peter. <i>Deutsche Parteien vor amerikanischen Gerichten; Erfahrungen aus der Praxis</i> (Joachim H. Granzow)	588
Briefer Notices: de Zayas, 589; Favez, 589.	
Books Received	589
International Legal Materials. Contents, Vol. XXX, No. 2 (March 1991) and No. 3 (May 1991)	591

BOARD OF EDITORS

Editor in Chief

THOMAS M. FRANCK

New York University School of Law

GEORGE H. ALDRICH

The Hague, Netherlands

RICHARD B. BILDER

University of Wisconsin Law School

THOMAS BUERGENTHAL

The National Law Center
George Washington University

DAVID D. CARON

University of California, Berkeley
School of Law

JONATHAN I. CHARNEY

Vanderbilt University School of Law

ANTHONY D'AMATO

Northwestern University
School of Law

LORI FISLER DAMROSCH

Columbia University School of Law

RICHARD A. FALK

Princeton University

TOM J. FARER

Washington College of Law and
School of International Service
The American University

MICHAEL J. GLENNON

University of California, Davis
School of Law

EDWARD GORDON

Albany Law School
Union University

KEITH HIGGET

The Fletcher School of Law and
Diplomacy, Tufts University

JOHN H. JACKSON

University of Michigan Law School

FREDERIC L. KIRGIS, JR.

Washington and Lee University
School of Law

RICHARD B. LILLICH

University of Virginia Law School

ANDREAS F. LOWENFELD

New York University School of Law

THEODOR MERON

New York University School of Law
and Graduate Institute of
International Studies, Geneva

BERNARD H. OXMAN

University of Miami School of Law

W. MICHAEL REISMAN

Yale Law School

PETER D. TROOBOFF

Washington, D.C.

DETLEV F. VAGTS

Harvard Law School

EDITH BROWN WEISS

Georgetown University Law Center

BURNS H. WESTON

University of Iowa
College of Law

JOHN LAWRENCE HARGROVE, *Ex Officio*
Washington, D.C.

Honorary Editors

JOHN N. HAZARD

Columbia University School of Law

LOUIS HENKIN

Columbia University School of Law

MONROE LEIGH

Washington, D.C.

OLIVER J. LISSITZYN

Columbia University School of Law

MYRES S. MCDUGAL

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

LOUIS B. SOHN

University of Georgia 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

VIRGINIA CORNETT

Assistant Editor Emerita

ELEANOR H. FINCH

The American Journal of International Law

The views expressed in the articles, editorial comments, book reviews and notes, and other contributions which appear in 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.

Manuscripts in triplicate may be sent to the Editor in Chief of AJIL, Professor Thomas M. Franck, New York University School of Law, 40 Washington Square South, New York, N.Y. 10012. All footnotes should be typed double space at the end of the manuscript. Please do not make multiple submissions to other journals. Persons making submissions are invited to indicate whether their manuscript is available on an IBM-PC diskette. AJIL uses WordPerfect 5.1. Subscriptions, orders for back numbers, correspondence with reference to AJIL, and books for review should be sent to the AMERICAN JOURNAL OF INTERNATIONAL LAW (ISSN 0002-9300), 2223 Massachusetts Avenue, N.W., Washington, D.C. 20008-2864.

Authorization to photocopy items for internal or personal use, or 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 \$5.00 per copy, plus 25¢ per page is paid directly to CCC, 27 Congress St., Salem, MA 01970. 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: 0002-9300/91 \$5.00 + .25.

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, \$85; special category, \$40 for persons *not* resident in a member country of the Organisation for Economic Co-operation and Development; intermediate, \$35; student, \$20. Membership application form is printed at the back of each issue of AJIL.

OFFICERS OF THE SOCIETY, 1991-1992

<i>Honorary President</i>	MONROE LEIGH
<i>President</i>	PETER D. TROOBOFF
<i>Vice-Presidents</i>	JOHN H. JACKSON, VIRGINIA A. LEARY, HENRY J. RICHARDSON III
<i>Executive Vice-President and Executive Director</i>	JOHN LAWRENCE HARGROVE
<i>Honorary Vice-Presidents:</i>	GOLER T. BUTCHER, MAXWELL COHEN, EDWARD DUMBAULD, DAVID G. GILL, RITA HAUSER, JOHN N. HAZARD, LOUIS HENKIN, KEITH HIGHET, LEONARD H. LEGAULT, CYNTHIA LICHTENSTEIN, MYRES S. MCDUGAL, LEONARD MEEKER, COVEY T. OLIVER, FRANZ M. OPPENHEIMER, ELLIOT L. RICHARDSON, STEFAN A. RIESENFELD, WILLIAM D. ROGERS, SEYMOUR J. RUBIN, DEAN RUSK, OSCAR SCHACHTER, STEPHEN M. SCHWEBEL, LOUIS B. SOHN, ERIC STEIN, JOHN R. STEVENSON
<i>Secretary</i>	MICHAEL H. CARDOZO
<i>Treasurer</i>	JAMES C. CONNER
<i>Assistant Treasurer</i>	STEVEN L. GIBSON