American Journal of International Law

VOLUME 64 1970



Published by 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."

The Society serves as a meeting place and forum for scholars, teachers, officials, lawyers and others, from some ninety-seven countries. At the end of April, it holds a three-day Annual Meeting in Washington at which current problems of international law are discussed. The Society also sponsors regional meetings outside of Washington in co-operation with other institutions. Salient questions of international law and relations are considered in depth by panels and study groups organized by the Society's Board of Review and Development. Works of scholarship are often published under the Society's auspices in connection with studies sponsored by the Board.

The Society periodically issues three publications:

The American Journal of International Law, the leading journal in the field of international law, has been published since 1907. A special number of the Journal carries the papers and discussions of the annual meeting of the Society. The Journal is distributed to all members of the Society without additional charge, and is available to non-members at a subscription rate of \$20 a year.

International Legal Materials, a bimonthly, is a unique international collection of texts of current official documents, including legislation, treaties, court decisions, and reports. Subscription rates are \$15 a year for members of the Society, \$35 for others.*

The monthly *Newsletter* provides members with news of the Society and other organizations in the field and reports on pending international litigation.

Society membership is open to all persons of whatever nationality and profession who are interested in its objectives. Dues * are: regular, \$25 for residents of the United States, \$10 for non-residents; professional, \$40; intermediate, \$15; student, \$7.50. Application for membership may be made on the form printed at the back of this issue of the JOURNAL.

OFFICERS OF THE SOCIETY, 1970-1971

 Honorary President
 PHILIP C. JESSUP

 President
 HAROLD D. LASSWELL

 Executive Vice President
 STEPHEN M. SCHWEBEL

 Vice Presidents
 RICHARD A. FALK, COVEY T. OLIVER, WILLIAM D. ROGERS

 Honorary Vice Presidents: DEAN G. ACHESON, WILLIAM W. BISHOP, JR., HERBERT W. BRIGGS, ARTHUR H. DEAN, HARDY C. DILLARD, CHARLES G. FENWICK, GREEN H. HACKWORTH, JAMES N. HYDE, HANS KELSEN, CHARLES E. MARTIN, BRUNSON MACCHESNEY, MYRES S. MCDOUGAL, OSCAR SCHACHTER, JOHN R. STEVENSON, ROBERT R. WILSON, QUINCY WRIGHT †

 Secretary
 EDWARD DUMBAULD

 Treasurer
 FRANZ M. OPPENHEIMER

 Assistant Treasurer
 JAMES C. CONNER

 * Effective January 1, 1971.
 1971.

† Deceased October 17, 1970.

BOARD OF EDITORS Editor-in-Chief

WILLIAM W. BISHOP, JR. University of Michigan Law School JOHN CAREY New York. N. Y. Alona E. Evans Wellesley College RICHARD A. FALK Princeton University Alwyn V. Freeman Beverly Hills, California WOLFGANG FRIEDMANN Columbia University School of Law JOHN N. HAZARD Columbia University School of Law LOUIS HENKIN Columbia University School of Law **JAMES NEVINS HYDE** New York, N. Y. RICHARD B. LILLICH University of Virginia Law School

RICHARD R. BAXTER Harvard Law School OLIVER J. LISSITZYN Columbia University BRUNSON MACCHESNEY Northwestern University Law School Myres S. McDougal Yale Law School STANLEY D. METZGER Washington, D. C. COVEY T. OLIVER University of Pennsylvania Law School STEFAN A. RIESENFELD University of California Law School OSCAR SCHACHTER New York, N. Y. STEPHEN M. SCHWEBEL Washington, D. C. LOUIS B. SOHN Harvard Law School Eric Stein University of Michigan Law School RICHARD YOUNG

Van Hornesville, N. Y.

Honorary Editors

HERBERT W. BRIGGS Cornell University HARDY C. DILLARD University of Virginia Law School CHARLES G. FENWICK Washington, D. C. LEO GROSS Fletcher School of Law and Diplomacy, Tufts University PHILIP C. JESSUP New York, N. Y. HANS KELSEN University of California PITMAN B. POTTER American University JOHN B. WHITTON Princeton University ROBERT R. WILSON Duke University QUINCY WRICHT * University of Virginia

Assistant Editor Eleanor H. Finch Editorial Assistant Rosemary G. Conley

* Deceased October 17, 1970.

The views expressed in the articles, editorial comments, book reviews and notes, and other contributions which appear in the JOURNAL are those of the individual authors and are not to be taken as representing the views of the Board of Editors or of The American Society of International Law.

The JOURNAL is published five times a year and is supplied to all members of The American Society of International Law without extra charge. The annual subscription to non-members of the Society is \$20.00. Available back numbers of the current volume of the JOURNAL will be supplied at \$4.50 a copy; other available back numbers at \$5.00 a copy.

Manuscripts may be sent to either the Editor-in-Chief of the JOURNAL, Harvard Law School, Cambridge, Mass. 02138 (Tel. 617—495-3132), or the Assistant Editor. Subscriptions, orders for back numbers, correspondence with reference to the JOURNAL, and books for review should be sent to the Assistant Editor of the JOURNAL, 2223 Massachusetts Avenue, N. W., Washington, D. C. 20008.

 PUBLICATION OFFICE:
 EDITORIAL AND EXECUTIVE OFFICE:

 PRINCE AND LEMON STREETS
 2223 MASSACHUSETTS AVENUE, N. W.

 LANCASTER, PA. 17604
 WASHINGTON, D. C. 20008

 Copyright © 1970 by The American Society of International Law

 Second-class postage paid at Lancaster, Pa.

AMERICAN JOURNAL OF

INTERNATIONAL LAW

VOLUME 64

CONTENTS

1970

[No. 1, January, 1970, pp. 1–228; No. 2, April, 1970, pp. 229–493; No. 3, July, 1970, pp. 495–808; No. 5, October, 1970, pp. 809–1028]

	PAGE
The Place of International Law in the Settlement of Disputes by the Security Council Rosalyn Higgins	1
South West Africa and the "Terrorist Trial" John Dugard	19
The Outer Limit of the Continental Shelf. A Rejoinder to Pro- fessor Louis Henkin Luke W. Finlay	42
A Reply to Mr. Finlay Louis Henkin	62
The Beirut Raid and the International Double Standard. A Reply to Professor Richard A. Falk Yehuda Z. Blum	73
Developments in the Law and Institutions of International Economic Relations:	
International Economic Development: The Emergent Issues Frederic L. Kirgis, Jr.	106
The North Sea Continental Shelf Cases—A Critique Wolfgang Friedmann	229
United Nations Peacekeeping and Host State Consent Jack Israel Garvey	241
The Middle East Problem Quincy Wright	270
The Treaty of Tlatelolco and the United States Davis R. Robinson	282
International Narcotics Control Ian G. Waddell	310
Report on the Survey of the Society's Membership Richard W. Edwards, Jr.	324
The Treaty on Treaties Richard D. Kearney and Robert E. Dalton	495
The Lateral Boundaries of the Continental Shelf and the Judgment of the International Court of Justice in the North Sea Continental Shelf Cases Etienne Grisel	562
Co-Operation for Development in the Lower Mekong Basin Virginia Morsey Wheeler	594
Who Killed Article 2 (4)? Thomas M. Franck	809
More on the Depositary of International Treaties Shabtai Rosenne	838

CONTENTS

R. R. Baxter and Thomas Buergenthal 853

Legal Aspects of the Geneva Protocol of 1925

The Process of Amending the Statute of the International Court of Egon Schwelb 880 Manifest Intent and the Generation by Treaty of Customary Rules of International Law Anthony A. D'Amato 892 The United Nations as Symbol and as Instrument Robert R. Wilson 139 What Weight to Conquest? Stephen M. Schwebel 344 The U. N. and Human Rights Complaints: U Thant as Strict Constructionist R. B. Lillich 610 On the Retirement of Professor William W. Bishop, Jr., as Editorin-Chief R. R. B. 903 Can the General Assembly Meet the Test of 1970? C. G. Fenwick 904 Forest L. Grieves Richard Young

Editorial Comment:

Justice

Notes and Comments: Reform of the Method of Rendering Decisions in the International Court of Justice 144 Equitable Solutions for Offshore Boundaries: The 1968 Saudi Arabia-Iran Agreement 152Report on Regional Meeting at Vanderbilt University School of Harold G. Maier Law, April 4-5, 1969 157 Report on Regional Conference in Denver, May 15, 1969 Ved P. Nanda 158 Regional Meeting at the University of Missouri-Kansas City Law Frederick W. Hess School, June 6, 1969 159 64th Annual Meeting of the Society Eleanor H. Finch 160 The United Nations: The Next Twenty-Five Years C. G. Fenwick 348 Professor Falk on the Quasi-Legislative Competence of the General Assembly N. G. Onuf 349 Human Rights and the Teaching of International Law Egon Schwelb 355 The Development of the Authentic Trilingual Text of the Convention on International Civil Aviation Gerald F. FitzGerald 364 The Singapore Branch of the Bank of China and the Exercise of "Extraterritorial Rights" S. Jayakumar 371 Cases Decided by the European Commission of Human Rights in 1966 Egon Schwelb 375 Lawasia Credit and Security Research Project Timothy Atkeson 378

PAGE

CONTENTS

https://doi.org/10.1017/S0002930000140886 Published online by Cambridge University Press	

Conclusion of Quebec-Louisiana Agreement on Cultural Co-Opera-Raymond S. Rodgers Law and Policy in International Business Eleanor H. Finch 64th Annual Meeting of the American Society of International Law Retirement of Editor-in-Chief of the Journal *E. H. F.* Report of the Thirteenth Meeting of the Advisory Committee on "Foreign Relations of the United States" Elmer Plischke Fifth Award of the Manley O. Hudson Gold Medal Ralph G. Albrecht 622

64th Annual Meeting of the American Society of International Law Eleanor H. Finch	623
Increase in Membership Dues and Subscription Rates of the Journal and International Legal Materials E. H. F.	629
Two Neglected Problems in Drafting Regimes for Deep Ocean Resources L. F. E. Goldie	905
Article 19: The Caribbean Contribution Robert Rosenstock	919
The United States Institute of Human Rights Louis Henkin	924
Commonwealth Treaty Research Program Hugh Lawford	925
Symposium on Cambodia Eleanor H. Finch	927
Proceedings of the Annual Meeting for 1970 E. H. F.	927

Correspondence:

Letter from Professor Julius Stone		161
Reply to Professor Julius Stone	Richard A. Falk	162
Letter from Professor B. A. Wortley		630

U. S. Contemporary Practice Relating to International Law

Stephen L. Gibson and Steven C. Nelson 164, 386, 631, 928

Judicial Decisions Involving Questions of International Law

Alona E. Evans 174, 412, 653, 948

Book Reviews and Notes	Leo Gross	184,	441,	719,	966
Books Received		222,	469,	737,	992

Official Documents:

International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties. Brussels, November	
29, 1969	471
International Convention on Civil Liability for Oil Pollution Dam-	
age. Brussels, November 29, 1969	481
TT to I Notice Teterrotice I I am Commission Depart of Mich	

United Nations International Law Commission. Report on Work of Its 21st Session, June 2-August 8, 1969 741

tion

vii PAGE

380

381

382

615

615

CONTENTS

PAGE

.

Protocol of Amendment to the Charter of the Organization of American States. Buenos Aires, February 27, 1967	996
Montevideo Declaration on the Law of the Sea. May 8, 1970	1021
United Nations Economic and Social Council. Resolution on Pro- cedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms. May 27, 1970	1023
International Legal Materials. Contents, Vol. VIII, Nos. 5 and 6 (1969); Vol. IX, Nos. 1-5 (1970) 226, 491, 807,	1026
Index	1029

viii

AMERICAN JOURNAL OF

INTERNATIONAL LAW

VOL. 64

January, 1970

NO. 1

PAGE

CONTENTS

The Place of International Law in the Settlement of Disputes by the	
Security Council Rosalyn Higgins	1
South West Africa and the "Terrorist Trial" John Dugard	19
The Outer Limit of the Continental Shelf. A Rejoinder to Professor	
Louis Henkin Luke W. Finlay	42
A Reply to Mr. Finlay Louis Henkin	62
The Beirut Raid and the International Double Standard. A Reply to Professor Richard A. Falk Yehuda Z. Blum	73
Developments in the Law and Institutions of International Economic Relations:	
International Economic Development: The Emergent Issues Frederic L. Kirgis, Jr.	106
Editorial Comment:	
The United Nations as Symbol and as Instrument Robert R. Wilson	139
Notes and Comments:	
Reform of the Method of Rendering Decisions in the International Court of Justice Forest L. Grieves	144
Equitable Solutions for Offshore Boundaries: The 1968 Saudi Arabia- Iran Agreement Richard Young	152
Report on Regional Meeting at Vanderbilt University School of Law, April 4-5, 1969 Harold G. Maier	157
Report on Regional Conference in Denver, May 15, 1969 Ved P. Nanda	158
Regional Meeting at the University of Missouri-Kansas City Law School, June 6, 1969 Frederick W. Hess	159
64th Annual Meeting of the Society Eleanor H. Finch	160
Correspondence:	
Letter from Professor Julius Stone	161
Reply to Professor Julius Stone Richard A. Falk	162
U. S. Contemporary Practice Relating to International Law	
Stephen L. Gibson	164
Judicial Decisions Involving Questions of International Law Edited by Alona E. Evans	174
Book Reviews and Notes. Edited by Leo Gross:	
Foreign Relations of the United States, Diplomatic Papers, 1945	184
The Conferences at Washington, 1941–1942, and Casablanca, 1943	188
Marek, Krystyna, Hans-Peter Furrer, Antoine Martin, Les Sources du Droit International. Répertoire des Décisions de la C.P.J.I.	190

CONTENTS (cont'd.)

	PACE
Ehrenzweig, Albert A., Private International Law	192
Fawcett, J. E. S., The Application of the European Convention on Huma Rights	n 194
Abi-Saab, Georges, Les Exceptions Préliminaires dans la Procédure d la Cour Internationale	
Chapal, Philippe, L'Arbitrabilité des Différends Internationaux	198
Johnston, Douglas M., and Hungdah Chiu, Agreements of the People	
Republic of China, 1949–1967: A Calendar	
Jordan, Robert S., The NATO International Staff-Secretariat 1952–198	
Flory, Thiébaut, Le G.A.T.T. Droit International et Commerce Mondi	
Ginsburg, Ruth B. (ed.), Business Regulation in the Common Mark Nations, Vol. I: Belgium, The Netherlands, Luxembourg	et 205
Bittker, Boris I., and Lawrence F. Ebb, United States Taxation of Foreig Income and Foreign Persons	gn 206
Cordier, Andrew W., and Wilder Foote, Public Papers of the Secretarie General of the United Nations. Vol. I: Trygve Lie, 1946-1953	s- 207
Inter-American Institute of International Legal Studies, Instrumen Relating to the Economic Integration of Latin America	ts 209
Bourne, C. B. (ed.), The Canadian Yearbook of International Law, 19	
Briefer Notices: Chayes, Ehrlich and Lowenfeld, 213; Hambro and Rovin 214; Swift, 214; Hildebrand, 215; Schaumann and Habscheid, 215; Erle 216; Fawcett, 217; Russell, 218; Kocot and Wolfke, 218; Mélanges offer a Polys Modinos, 219; Sprudzs and Rusis, 220; Yearbook of the A.A. 1965, 1966, 221; Hüfner and Naumann, 221.	e, er, ts
Books Received	222
International Legal Materials. Contents, Vol. VIII, Nos. 5 (Septembe	r)
and 6 (November), 1969	226

The views expressed in the articles, editorial comments, book reviews and notes, and other contributions which appear in the JOURNAL are those of the individual authors and are not to be taken as representing the views of the Board of Editors or of The American Society of International Law.

The JOUENAL is published quarterly and is supplied to all members of The American Society of International Law without extra charge. The annual subscription to non-members of the Society is \$20.00 and includes subscription to the *Proceedings* of the Society. Available back numbers of the current volume of the JOUENAL will be supplied at \$4.50 a copy; other available back numbers at \$5.00 a copy.

Subscriptions, orders for back numbers, correspondence with reference to the JOUENAL, manuscripts and books for review should be sent to the Assistant Editor of the JOUENAL, 2223 Massachusetts Avenue, N. W., Washington, D. C. 20008.

> PUBLICATION OFFICE: PRINCE AND LEMON STREETS LANCASTER, PA. 17604

EDITORIAL AND EXECUTIVE OFFICE: 2223 MASSACHUSETTS AVENUE, N. W. WASHINGTON, D. C. 20008

Copyright © 1970 by The American Society of International Law Second-class postage paid at Lancaster, Pa.

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."

The Society serves as a meeting place and forum for scholars, teachers, officials, lawyers and others, from some ninety-seven countries. At the end of April, it holds a three-day Annual Meeting in Washington at which current problems of international law are discussed. The Society also sponsors regional meetings outside of Washington in co-operation with other institutions. Salient questions of international law and relations are considered in depth by panels and study groups organized by the Society's Board of Review and Development. Works of scholarship are often published under the Society's auspices in connection with studies sponsored by the Board.

The Society periodically issues four publications:

The American Journal of International Law, the leading quarterly in the field of international law, has been published since 1907. The Journal is distributed to all members of the Society without additional charge, and is available to non-members at a subscription rate of \$20 a year.

International Legal Materials, a bimonthly, is a unique international collection of texts of current official documents, including legislation, treaties, court decisions, and reports. Subscription rates are \$15 a year for members of the Society, \$25 for others.

The annual *Proceedings* of the Society record the papers and comments of the Annual Meeting, and are distributed to all members of the Society and subscribers to the *Journal*. Others may buy it at \$5 a copy.

The monthly Letter to Members provides news of the Society and other organizations in the field and reports on pending international litigation.

Society membership is open to all persons of whatever nationality and profession who are interested in its objectives. Dues are: regular, \$15 for residents of the United States, \$10 for non-residents; professional, \$30; intermediate, \$10; student, \$5. Application forms and further information may be obtained from the Membership Secretary of the Society.

OFFICERS OF THE SOCIETY, 1969-70

 Honorary President
 PHILIP C. JESSUP

 President
 OSCAR SCHACHTER

 Executive Vice President
 STEPHEN M. SCHWEBEL

 Vice Presidents
 RICHARD R. BAXTER, HAROLD D. LASSWELL, MONROE LEIGH

 Honorary Vice Presidents: DEAN G. ACHESON, WILLIAM W. BISHOP, JR., HERBERT W. BRIGGS,
ARTHUR H. DEAN, HARDY C. DILLARD, CHARLES G. FENWICK, GREEN H. HACKWORTH,
JAMES N. HYDE, HANS KELSEN, CHARLES E. MARTIN, BRUNSON MACCHESNEY, MYRES S.
MCDOUGAL, JOHN R. STEVENSON, ROBERT R. WILSON, QUINCY WRIGHT

 Secretary
 Edward Dumbauld

 Treasurer
 FRANZ M. OPPENHEIMER

 Assistant Treasurer
 JAMES C. CONNER

BOARD OF EDITORS

Editor-in-Chief

WILLIAM W. BISHOP, JR. University of Michigan Law School

RICHARD R. BAXTER Harvard Law School

ALONA E. EVANS Wellesley College

RICHARD A. FALK Princeton University

ALWYN V. FREEMAN Beverly Hills, California

WOLFGANG FRIEDMANN Columbia University School of Law

JOHN N. HAZARD Columbia University School of Law

LOUIS HENKIN Columbia University School of Law

JAMES NEVINS HYDE New York, N. Y.

RICHARD B. LILLICH University of Virginia Law School

OLIVER J. LISSITZYN Columbia University BRUNSON MACCHESNEY Northwestern University Law School

MYRES S. MCDOUGAL Yale Law School

STANLEY D. METZGER Washington, D. C.

COVEY T. OLIVER University of Pennsylvania Law School

STEFAN A. RIESENFELD University of California Law School

OSCAR SCHACHTER New York, N. Y.

STEPHEN M. SCHWEBEL Washington, D. C.

LOUIS B. SOHN Harvard Law School

ERIC STEIN University of Michigan Law School

RICHARD YOUNG Van Hornesville, N. Y.

Honorary Editors

HERBERT W. BRIGGS Cornell University

HARDY C. DILLARD University of Virginia Law School

CHARLES G. FENWICK Washington, D. C.

LEO GROSS Fletcher School of Law and Diplomacy, Tufts University

HANS KELSEN University of California JOSEF L. KUNZ University of Toledo

PITMAN B. POTTER American University

JOHN B. WHITTON Princeton University

ROBERT R. WILSON Duke University

QUINCY WRIGHT University of Virginia

Assistant Editor ELEANOR H. FINCH

Editorial Assistant ROSEMARY G. CONLEY