# American Journal of International Law

# *VOLUME 67* 1973



**Published** by The

American Society of International Law

#### 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 one hundred countries. In 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 issue 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 \$30 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.

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, 1973-1974**

 

 Honorary President
 Myres S. McDougal

 President
 William D. Rogers

 Vice Presidents
 Richard N. Gardner, Ernest A. Gross, Rosalyn Higgins

 Executive Vice President
 Stephen M. Schwebel

 Honorary Vice Presidents:
 William W. Bishop, Jr., Herbert W. Bricgs, Arthur H. Dean, Hardy C. Dillard, Leo Gross, John N. Hazard, James N. Hyde, Philip C. Jessup, Harold D. Lasswell, Monroe Leigh, Charles E. Martin, Brunson MacChesney, Oscar Schacter, John R. Stevenson, Robert R. Wilson.

 Secretary
 Edward Dumbauld

 Treasurer
 Franz M. Oppenheimer

 Assistant Treasurer
 James C. Conner

<sup>e</sup> As of January 1974, regular subscriptions for *International Legal Materials* will be \$45; dues for non-resident members will be \$15.

# AMERICAN JOURNAL OF INTERNATIONAL LAW

#### VOLUME 67

## **CONTENTS**

1973

[No. 1, January 1973, pp. 1–228; No. 2, April 1973, pp. 229–422; No. 3, July 1973, pp. 423–640; No. 4, October 1973, pp. 641–840.]

#### PAGE

The Amendments to the Rules of Procedure of the International Court of Justice Eduardo Jiménez de Aréchaga	1
Poland's Western Frontier and the 1970 Treaties	
Krzystof Skubiszewski	23
Berlin and the Quadripartite Agreement of 1971 Günther Doeker, Klaus Melsheimer, and Dieter Schröder	44
A New Legal Framework for Trade Between the United States and the Soviet Union: The 1972 US-USSR Trade Agreement Robert Starr	63
The Twenty-Fourth Session of the International Law Commission Richard D. Kearney	84
National Jurisdiction and International Responsibility: New Canadian Approaches to International Law Allan Gotlieb and Charles Dalfen	229
The Protection of Shareholders' Interests in the Light of the Barcelona Traction Case F. A. Mann	259
After Bangladesh: The Law of Humanitarian Intervention by Mili- tary Force Thomas M. Franck and Nigel S. Rodley	275
El Chamizal Philip C. Jessup	423
The Admission of Judges Ad Hoc in Advisory Proceedings: Some Re- flections in the Light of the Namibia Case Michla Pomerance	446
International Law Aspects of Repatriation of Prisoners of War during Hostilities Richard A. Falk	465
Natural Justice at the United Nations: The Rhodesia Case Michael Stephen	479
Aircraft Hijacking: What is Being Done Alona E. Evans	641
Confronting Total War: A "Global" Humanitarian Policy	
Jacques Freymond	672
International Law Aspects of Repatriation of Prisoners of War Dur- ing Hostilities: A Reply Howard S. Levie	<b>6</b> 93
Some International Law Problems Posed by the Nationalization of the Copper Industry by Chile Francisco Orrego Vicuña	711
The Jurisprudence of the Foreign Claims Settlement Commission: Chinese Claims Charles Ford Redick	728

CONTENTS

Editorial Comment:	PACE
In Memoriam: Wolfgang Gaston Friedmann	100
John N. Hazard, Louis Henkin, and Oliver J. Lissitzyn	102
In-Flight Crime and United States Legislation Oliver J. Lissitzyn	306
Hans Kelsen: October 11, 1881–April 15, 1973 Leo Gross	491
Charles Ghequiere Fenwick: 1880–1973 Alwyn V. Freeman	501
The Doctrine of Self-executing Treaties and Community Law: A Pioneer Decision of the Court of Justice of the European Com- munity Stefan A. Riesenfeld	504
International Terrorism and International Criminal Jurisdiction Leo Gross	<b>50</b> 8
Notes and Comments:	
United States Ratification of the Hague Convention on the Taking of Evidence Abroad Philip W. Amram	104
Mini-States and a More Effective United Nations Stephen M. Schwebel	108
The Service of Professor Brunson MacChesney as Acting Editor-in- Chief of the Journal Richard R. Baxter	116
Annual Meeting of the American Society of International Law Anne Simons	117
U.S. International Law Digests: Some History and a New Approach Arthur W. Rovine	314
International Law as a Cultural Excrescence Alfred P. Rubin	319
New Student Journals Ann Simons	324
Legal Aspects of the Continued Detention of Pakistani Prisoners of War by India Howard S. Levie	512
The US-USSR Trade Agreement From a Soviet Perspective Harold J. Berman	516
The Twelfth Session of the Hague Conference on Private Interna- tional Law Philip W. Amram	522
The Francis Déak Prizes Anne Simons	531
Recent Movements toward Strengthening the International Court of Justice Eberhard P. Deutsch	741
Public Debt and Sovereign Immunity: Some Considerations Pertinent to S.566         G. R. Delaume	745
Correspondence:	
Letters by Thomas Ehrlich and Carl B. Spaeth to John R. Stevenson, Legal Adviser, Department of State	325
Teaching International Law Alfred P. Rubin	757
Reply to Professor Marek Bruno Simma	<b>75</b> 8

Contemporary Practice of the United States Relating to International Law Arthur W. Rovine 118, 328, 533, 760

.

CONTENTS 1973] vii **Judicial Decisions** Alona E. Evans 127, 338, 547, 778 **Book Reviews and Notes** Leo Gross 156, 352, 759, 791 **Books Received** 190, 386, 614, 824 **Official Documents:** International Court of Justice: 195 Rules of Court, as Amended on May 10, 1972 United States-Democratic Republic of Vietnam-Republic of Vietnam-Provisional Revolutionary Government of the Republic of South Vietnam 389 Agreement on Ending the War and Restoring Peace in Vietnam Protocol concerning the Cease-fire in South Vietnam and the Joint Military Commission 309 Protocol concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel 407 Protocol concerning the International Commission of Control and Supervision 412 Protocol concerning the Removal, Permanent Deactivation, or Destruction of Mines in the Territorial Waters, Ports, Harbors, and Waterways of the Democratic Republic of Vietnam 418 Cuba-United States. Memorandum of Understanding on Hijacking of Aircraft and Vessels and Other Offenses 619 Act of the International Conference on Viet-Nam 620 622 United States: Protection of Diplomats Act Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 626 United States-Democratic Republic of Vietnam-Republic of Vietnam-Provisional Revolutionary Government of South Vietnam. 826 Joint Communique, June 13, 1973 Union of Soviet Socialist Republics-United States Basic Principles on the Further Limitation of Strategic Offensive 832 Weapons Agreement on the Prevention of Nuclear War 833 International Legal Materials. Contents, Vol. XI, No. 5 (1972); Vol. XII, No. 1-4 (1973) 227, 421, 636, 835 Table of Cases 838 Index **840** Copyright © 1973 by The American Society of International Law

Second-class postage paid at Lancaster, Pa.

## **BOARD OF EDITORS**

## Editor-in-Chief RICHARD R. BAXTER Harvard Law School

RICHARD B. BILDER University of Wisconsin Law School

THOMAS BUERGENTHAL State University of New York, Buffalo IOHN CAREY

New York, N. Y. JEROME A. COHEN

Harvard Law School ALONA E. EVANS

Wellesley College

RICHARD A. FALK Princeton University

THOMAS M. FRANCK New York University

LOUIS HENKIN Columbia University School of Law

MONROE LEIGH Washington, D. C.

RICHARD B. LILLICH University of Virginia Law School

OLIVER J. LISSITZYN Columbia University School of Law BRUNSON MACCHESNEY Northwestern University Law School STANLEY D. METZGER Georgetown University Law Center JOHN NORTON MOORE University of Virginia Law School COVEY T. OLIVER University of Pennsylvania Law School William M. Reisman Yale 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 JOHN R. STEVENSON New York, N.Y.

MARJORIE M. WHITEMAN Liberty Center, Ohio

#### Honorary Editors

WILLIAM W. BISHOP, JR. University of Michigan Law School
HERBERT W. BRIGGS Cornell University
HARDY C. DILLARD University of Virginia Law School
LEO GROSS. Fletcher School of Law and Diplomacy, Tufts University PHILIP C. JESSUP New York, N. Y.

MYRES S. MCDOUGAL Yale Law School

PITMAN B. POTTER American University

JOHN B. WHITTON Princeton University

ROBERT R. WILSON Duke University

Assistant Editor Anne Patricia Simons

Editorial Assistant Rosemary G. Conley

Assistant Editor Emerita ELEANOR H. FINCH