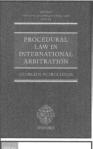
# American Journal of International Law

July 2004 Vol. 98 No. 3



Published by

The American Society of International Law

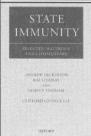












## OXFORD

#### **EU Human Rights Policies**

A Study in Irony ANDREW WILLIAMS

The EU's human rights policies are plagued by double standards: it applies radically different approaches in its external and internal operations. In this book, Andrew Williams reveals the nature and scope of this bifurcation and the resultant discrimination, and argues that the ironical condition revealed undermines both the EU's commitment to human rights and its moral credibility.

2004 \$74.00

### International Covenant on Civil and Political Rights

Cases, Commentary, and Materials Second Edition SARAH JOSEPH, JENNY SCHULTZ, AND MELISSA CASTAN

Now fully updated and in its second edition, this book provides a comprehensive collation and analysis of the jurisprudence of the Human Rights Committee, the monitoring body established under the ICCPR. 2004 \$230.00

#### Commentaries on Arms Control Treaties

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction Volume I

STUART MASLEN

This commentary is a detailed guide to the interpretation of the 1997 Convention banning Anti-Personnel Mines. It includes a description of the development of anti-personnel mines, their military utility, and the negotiating history of the Convention.

(Oxford Commentaries on International Law) 2004 \$145.00

#### Procedural Law in International Arbitration

**GEORGIOS PETROCHILOS** 

This book comprehensively analyses the relevant legislative practice of all major arbitration venues in the world, as well as the arbitral practice of a number of arbitral institutions. The book proposes an analytical model for the determination of the procedural law of international arbitration, as well as a number of 'model' legislative provisions of substantive and private international law.

2004 \$175.00

New in Paperback!

#### Human Rights and the End of Empire

Britain and the Genesis of the European Convention A. W. BRIAN SIMPSON

This is the first book that gives a comprehensive account of how the European Convention on Human Rights came into existence, of the part played in its genesis by the British government, and of its significance for Britain in the period between 1953 and 1966.

2001 (paper 2004) paper \$45.00

#### State Immunity

Selected Materials and Commentary ANDREW DICKINSON, RAE LINDSAY, AND JAMES P. LOONAM CLIFFORD CHANCE LLP

Focusing on legislation in the United Kingdom and the United States, this volume looks at the application of immunities and privileges as well as their practical significance for practitioners in both jurisdictions.

2004 \$230.00

Prices are subject to change and only apply in the U.S. To order, or for more information, please call 1-800-451-7556. In Canada, call 1-800-387-8020. Visit our website at www.oup.com/us

OXFORD UNIVERSITY PRESS

# AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL.	July 2004			NO. 3
	CONTENTS			PAGE
Intern	national Law Immunities and the International Criminal C	ourt	Dapo Akande	407
	This article considers the types of immunity available to state their applicability in national and international prosecutions for it crimes. The author analyzes the tensions between the provision Statute dealing with immunity and argues that while the immunit of nonparties remain unaffected by the Statute, ICC parties he obligations going beyond customary law in relation to their ow	ntern is of t ies of ave ac	national the ICC officials ecepted	
Comp	liance with Final Judgments of the International Court of J	ustic	e	
	ce 1987		Colter Paulson	434
	This examination of the recent final judgments of the Internation Justice assesses the degree of compliance attained and the factor ence it. All of the judgments have met with a high degree of designificant efforts toward compliance, and most have won full including resolution of the underlying dispute.	ors tha eferen	at influ- nce and	
В	iability of Economic, Social, and Cultural Rights: Should ? e an International Complaints Mechanism to Adjudicate to Food, Water, Housing, and Health? Michael J. Dennis of	he R	ights	462
	The proposal to establish a new individual-complaints mechanis International Covenant on Economic, Social and Cultural Rights tant issues about justiciability. The authors explore the negotiat the Covenant as well as an array of practical challenges to, an upon, the proposed mechanism, asking how it would function, a basis, and to what practical benefit.	sm un raises ing hi d con	der the simpor- istory of istraints	402
	Manley O. Hudson Lecture: Why Regime Change Is (Almo Bad Idea		ways) ichael Reisman	516
Notes	and Comments			
Poli	icing the High Seas: The Proliferation Security Initiative		Michael Byers	526
Wh	en Is a Final Clause Not a Final Clause?	SI	habtai Rosenne	546
$Th\epsilon$	e Francis Deák Prize			549
Nor	ninations for the Board of Editors			540

International Decisions	Edited by David D. Caron
Oil Platforms (Iran v. United States) (Pieter H	I. F. Bekker) 5
ICJ judgment regarding U.S. attack on Ira Iraq war	nian oil installations during Iran-
Case Concerning Avena and Other Mexican Na L. Shelton)	tionals (Mexico v. United States) (Dinah 5
ICJ judgment on U.S. obligation to review arrested and tried without notice of right	
Commission v. United Kingdom et al. (Frank	Hoffmeister) 5
European Court of Justice ruling on extern and member states regarding bilateral air	
Hingitaq 53, Qajutaq Petersen, and Others v. P	rime Minister's Office (Ole Spiermann) 5
Danish Supreme Court decision on claim return of indigenous people relocated fro	
Contemporary Practice of the United States R	elating to International Law  Edited by Sean D. Murphy
Supreme Court's Use of Court Decisions of Trea	ty Partners 5
Implementation of Avena Decision by Oklahom	
Retroactivity of the Foreign Sovereign Immuniti	
Replacement of U.SLed Force in Haiti with UI	N Peacekeeping Mission 5
Establishment of U.S. Antiterrorism Maritime T	Fransportation System 5
Report of U.S. Commission on Ocean Policy	5
U.S. Opposition to Measures Condemning Israe	
U.S. Abuse of Iraqi Detainees at Abu Ghraib Pr	
Mutual Legal Assistance Treaties with the Euro	•
U.S. Reaction to ICJ Judgment in Iranian Oil	
Coalition Laws and Transition Arrangements	• • •
UN Security Council Resolution on Nonprolifer	•
Senate Consent to U.S. Ratification of IAEA Ad	Iditional Protocol 60
Recent Books on International Law	Edited by Richard B. Bilder
Book Reviews	
Choi, Won-Mog. 'Like Products' in Interna GATT/WTO Jurisprudence (Steve Charne	ovitz) 6
Dahm, Georg, Jost Delbrück, and Rüc (Detlev F. Vagts)	6
Nathwani, Niraj. Rethinking Refugee Law (	•
Shany, Yuval. The Competing Jurisdictions of (Laurence Boisson de Chazournes)	65
Reinisch, August. International Organizati Shaw)	6:
Reydams, Luc. <i>Universal Jurisdiction: Intern</i> (Kenneth C. Randall)	ational and Municipal Legal Perspectives 6
Butler, William E. The Law of Treaties in Rus States: Text and Commentary (Peter Krus	•
Cheng, Bin. Studies in International Space	Law (Jonathan F. Galloway) 6.
Collected Essays	6
Books Received	6.
International Legal Materials. Contents, Vol.	XLIII, No. 3 (May 2004) 6

#### **BOARD OF EDITORS**

Editors in Chief

LORI FISLER DAMROSCH Columbia University School of Law BERNARD H. OXMAN University of Miami School of Law

JOSÉ E. ALVAREZ

Columbia University School of Law

DAVID J. BEDERMAN

**Emory University School of Law** 

DANIEL BODANSKY

University of Georgia School of Law

DAVID D. CARON

Univ. of California (Berkeley) School of Law

HILARY CHARLESWORTH

Australian National University

STEVE CHARNOVITZ

Washington, D.C.

CHRISTINE M. CHINKIN

London School of Economics

JAMES R. CRAWFORD

University of Cambridge

JOHN R. CROOK

Rome, Italy

JACK L. GOLDSMITH

Washington, D.C.

BENEDICT KINGSBURY

New York University School of Law

DAVID A. MARTIN

University of Virginia School of Law

MICHAEL J. MATHESON

George Washington Univ. Law School

SEAN D. MURPHY

George Washington Univ. Law School

STEVEN R. RATNER

University of Texas School of Law

DINAH L. SHELTON

George Washington Univ. Law School

BETH A. SIMMONS

Harvard University

RICHARD H. STEINBERG

Univ. of California (LA) School of Law

**IANE E. STROMSETH** 

Georgetown University Law Center

JOEL P. TRACHTMAN

Fletcher School of Law and Diplomacy

RUTH WEDGWOOD

Johns Hopkins University

**EDITH BROWN WEISS** 

Georgetown University Law Center

DIANE P. WOOD

Chicago, Illinois

JAMES H. CARTER

ex officio

CHARLOTTE KU

#### Honorary Editors

GEORGE H. ALDRICH

The Hague, the Netherlands

RICHARD B. BILDER

University of Wisconsin Law School

CHARLES N. BROWER

The Hague, the Netherlands

THOMAS BUERGENTHAL

The Hague, the Netherlands

RICHARD A. FALK

University of California at Santa Barbara

TOM J. FARER

University of Denver

THOMAS M. FRANCK

New York University School of Law

LOUIS HENKIN

Columbia University School of Law

ROSALYN HIGGINS

The Hague, the Netherlands

JOHN H. JACKSON

Georgetown University Law Center

FREDERIC L. KIRGIS

Washington and Lee Univ. School of Law

man Editors

ANDREAS F. LOWENFELD

New York University School of Law

THEODOR MERON

The Hague, the Netherlands

JOHN NORTON MOORE

University of Virginia School of Law

COVEY T. OLIVER

Easton, Maryland

W. MICHAEL REISMAN

Yale Law School

STEPHEN M. SCHWEBEL

Washington, D.C.

LOUIS B. SOHN

George Washington Univ. Law School

ERIC STEIN

University of Michigan Law School

DETLEV F. VAGTS

Harvard Law School

BURNS H. WESTON

University of Iowa College of Law

Senior Associate Editor ANNA ASCHER

Managing Editor CARA M. SMITH Associate Editor STEPHEN SCHER

JOSEPH V. McGrath

Assistant Editors

DOREEN G. YAMAMOTO

#### 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, \$165; special category, \$110; new professional, \$85; retired, \$110; student, \$30. Sustaining Memberships—contributing (\$275) 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).

#### 

President JAMES H. CARTER Vice Presidents LUCINDA LOW, DAVID A. MARTIN, LUCY REED Executive Vice President and Executive Director CHARLOTTE KU
Past Presidents: Charles N. Brower, Thomas M. Franck, Louis Henkin, Covey T. Oliver, William D. Rogers, Arthur W. Rovine, Anne-Marie Slaughter, Louis B. Sohn, Peter D. Trooboff, Edith Brown Weiss
Honorary Vice Presidents: Thomas M. Franck, Arthur W. Rovine, Anne-Marie Slaughter
Counsellors: James Bacchus, Rosemary Barkett, Richard B. Bilder, Ian Brownlie, Hilary Charlesworth, Lori Fisler Damrosch, Pierre-Marie Dupuy, Tom J. Farer, John King Gamble, Conrad Harper, Rita E. Hauser, Rosalyn Higgins, John H. Jackson, Susan L. Karamanian, Martti Koskenniemi, Michael J. Matheson, Donald McRae, Sandra Day O'Connor, W. Michael Reisman, Stephen M. Schwebel, Dinah L. Shelton, Jerome Shestack, Patricia Wald, Edwin D. Williamson
Secretary FREDERIC L. KIRGIS Treasurer NANCY L. PERKINS Assistant Transport

#### PATRONS OF THE SOCIETY

DOMINGO E. ACEVEDO GERALD AKSEN ARTHUR R. ALBRECHT TEYMOUR A. ALIREZA MAHNOUSH H. ARSANJANI 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 WILLIAM J. BUTLER SUSANA AND HUGO CAMINOS DAVID D. CARON IAMES H. CARTER JAMES RICHARD CRAWFORD ANTHONY D'AMATO LORI FISLER DAMROSCH AND IEAN BAUER FISLER ARTHUR H. DEAN\* ELI WHITNEY DEBEVOISE II SARAH WHITCRAFT DEFORD\* EDWARD DUMBAULD\* RICHARD W. EDWARDS, JR. ALONA E. EVANS\* BENJAMIN B. FERENCZ \* decensed

ALEXANDER FREEMAN ARTHUR K. KUHN THOMAS M. FRANCK ALWYN V. FREEMAN\* 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 JOHN H. JACKSON RICHARD A. JOHNSON SUSAN L. KARAMANIAN FREDERIC L. KIRGIS CHARLOTTE KU JENNIFER LAKE AND DONALD FRANCIS DONOVAN JEFFREY LANG ELIHU LAUTERPACHT ROYS. LEE JEREMY I. AND CANDACE C. LEVITT MRS. RICHARD LILLICH A. VAUGHAN LOWE BRUNSON MACCHESNEY\*

In Memoriam

HENRY C. MORRIS

**EDWARD WATSON MCWHINNEY** ROBERT F. MEAGHER HUSAM MESHAL W. ROBERT MORGAN\* VED P. NANDA BERNARD H. OXMAN HERMAN PHLEGER\* W. MICHAEL REISMAN ANDRÉS RIGO 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

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 \$180 (\$220 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., Inc., 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: Hein Online, a service of William S. Hein & Co., Inc., at <a href="http://www.heinonline.org">http://www.heinonline.org</a>; Mead Data Central, Inc., provider of the LEXIS®/NEXIS® services, P.O. Box 933, Dayton, OH 45401, USA, toll-free (800) 227-9597; and West Publishing Company, provider of WESTLAW®, 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, 149 Fifth Avenue, 8th Floor, New York, NY 10010, (212) 358-6400). 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¢ 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: tel. (978) 750-8400; fax (978) 750-4744.

**Advertising**: Inquiries should be sent to the Marketing Manager, ASIL, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864, tel. (202) 939-6000; fax (202) 797-7133.

\* \* \* \*

Periodicals postage paid at Washington, DC, and at additional mailing office. POSTMASTER: 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 MANUSCRIPTS

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 requested 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 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 <a href="http://www.asil.org/styledoc.htm">http://www.asil.org/styledoc.htm</a>. 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 AJIL@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 © 2004 by The American Society of International Law Printed by Cadmus Professional Communications, Linthicum, MD 21090