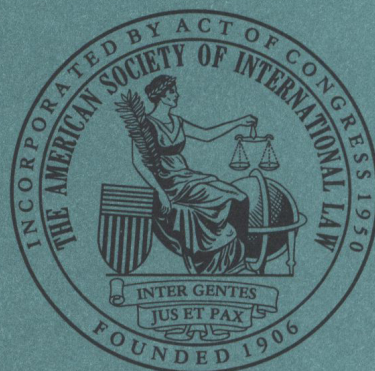


*American
Journal of
International
Law*

July 1996

Vol. 90 No. 3



Published by

The American Society of International Law

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 90

July 1996

NO. 3

CONTENTS

	PAGE
Clan and Superclan: Loyalty, Identity and Community in Law and Practice <i>Thomas M. Franck</i>	359
<p>In an era marked both by global and regional governance and by rabid neo-tribalism, individual self-definition has become complicated. Loyalties once focused on the state may now be distributed among various referents, from the institutions of civil society to religions and affinity groups. Thus, a major life-task of the modern person is to achieve deliberate self-definition to the extent permitted by law. By examining Western laws pertaining to multiple citizenship, the author argues that, for the first time, this voluntary self-definition is supported by enlightened legal systems.</p>	
Collective Action in the Utilization of Shared Freshwater: The Challenges of International Water Resources Law <i>Eyal Benvenisti</i>	384
<p>This article explores the potential contribution of international law to the optimal utilization of international freshwater. Dr. Benvenisti adopts a multidisciplinary approach in analyzing both the collective-action problems inherent in the management of water resources and the possible legal responses to these problems. This analysis demonstrates that international law can encourage cooperation between riparian states and suggests how current law and recent proposals for its codification and development can be made more conducive to such cooperation.</p>	
Editorial Comment The WTO Dispute Settlement Understanding: Less Is More <i>Judith Hippler Bello</i>	416
Agora: The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act Congress and Cuba: The Helms-Burton Act Title III of the Helms-Burton Act Is Consistent with International Law <i>Andreas F. Lowensfeld</i> <i>Brice M. Clagett</i>	419 434
Notes and Comments Correspondence The Francis Deák Prize	441 441
Contemporary Practice of the United States Relating to International Law <i>Marian Nash (Leich)</i>	442
International Decisions Piermont v. France European Court of Human Rights decision on political activities of aliens Regina v. Finta Canadian Supreme Court war crimes decision Cuban American Bar Association v. Christopher Haitian Refugee Center, Inc. v. Christopher Eleventh Circuit decisions on refugee rights <i>Edited by Judith Hippler Bello</i> <i>Juliane Kokott & Beate Rudolf</i> <i>Irwin Cotler</i> <i>Thomas David Jones</i>	456

Current Developments

- The Protocol on "Blinding Laser Weapons": A New Direction for
International Humanitarian Law *Burrus M. Carnahan & Marjorie Robertson* 484
- The Work of the Sixth Committee at the Fiftieth Session of the UN
General Assembly *Virginia Morris & M.-Christiane Bourloyannis-Vrailas* 491
- The International Criminal Tribunal for Rwanda: The Politics and
Pragmatics of Punishment *Payam Akhavan* 501
- Surrender of Fugitives by the United States to the War Crimes Tribunals
for Yugoslavia and Rwanda *Robert Kushen & Kenneth J. Harris* 510

Book Reviews and Notes

Edited by Richard B. Bilder

- Schachter, Oscar, and Christopher C. Joyner (eds.). *United Nations Legal Order*
(2 vols.) (Thomas M. Franck) 519
- Lyons, Gene M., and Michael Mastanduno (eds.). *Beyond Westphalia? State*
Sovereignty and International Intervention (Richard A. Falk) 523
- Spruyt, Hendrik. *The Sovereign State and its Competitors* (Harold K. Jacobson) 526
- McNamara, Robert S., with Brian VanDeMark. *In Retrospect: The Tragedy and*
Lessons of Vietnam (Michael J. Glennon) 527
- Caron, David D., and Matti Pellonpää. *The UNCITRAL Arbitration Rules as*
Interpreted and Applied (Jamison S. Borek) 529
- Bernhardt, Rudolf (ed.). *Interim Measures by International Courts* (J. G.
Merrills) 531
- Lillich, Richard B. (ed.). *The United Nations Compensation Commission* (Alan D.
Meltzer) 532
- Vasquez, John A., Sanford Jaffe, James Turner Johnson, and Linda Stamato
(eds.). *Beyond Confrontation: Learning Conflict Resolution in the Post-Cold War*
Era (I. William Zartman) 534
- Kacowicz, Arie Marcelo. *Peaceful Territorial Change* (Dalia Dassa Kaye & David
Kaye) 536
- Schermers, Henry G., Cees Flinterman, Alfred E. Kellermann, Johan C. van
Haersolte, and Gert-Wim A. van de Meent (eds.). *Free Movement of Persons*
in Europe: Legal Problems and Experiences (Guy S. Goodwin-Gill) 538
- Henckaerts, Jean-Marie. *Mass Expulsion in Modern International Law and*
Practice (Miriam Sapiro) 539
- Kritz, Neil J. (ed.). *Transitional Justice. How Emerging Democracies Reckon with*
Former Regimes. Vol. 1: General Considerations; Vol. 2: Country Studies; Vol. 3:
Laws, Rulings, and Reports (Theodore J. Piccone) 540
- Bhagwati, Jagdish N., and Robert E. Hudec (eds.). *Fair Trade and*
Harmonization. Prerequisite for Free Trade? Vol. 1: Economic Analysis; Vol. 2:
Legal Analysis (Thomas J. Schoenbaum) 543
- Dolzer, Rudolf, and Margrete Stevens. *Bilateral Investment Treaties* (Kenneth J.
Vandavelde) 545
- Park, William W. *International Forum Selection* (Patrick J. Borchers) 547

Collected Essays: *International Legal Issues arising under the United Nations Decade*
of International Law, 549; Fifty Years of the International Court of Justice, 550.

Books Received

551

International Legal Materials. Contents, Vol. XXXV, No. 2 (March 1996)

556

BOARD OF EDITORS

Editors in Chief

- | | |
|--|--|
| THEODOR MERON
NYU School of Law | DETLEV F. VAGTS
Harvard Law School |
| GEORGE H. ALDRICH
The Hague, Netherlands | JOHN H. JACKSON
University of Michigan Law School |
| JUDITH HIPPLER BELLO
Washington, D.C. | HAROLD HONGJU KOH
Yale Law School |
| CHARLES N. BROWER
Washington, D.C. | STEPHEN C. MCCAFFREY
University of the Pacific
McGeorge School of Law |
| THOMAS BUERGENTHAL
The George Washington University
Law School | JOHN H. MCNEILL
Washington, D.C. |
| DAVID D. CARON
University of California, Berkeley
School of Law | BERNARD H. OXMAN
University of Miami School of Law |
| JONATHAN I. CHARNEY
Vanderbilt University School of Law | W. MICHAEL REISMAN
Yale Law School |
| CHRISTINE M. CHINKIN
University of Southampton | ANNE-MARIE SLAUGHTER
Harvard Law School |
| JOHN R. CROOK
Washington, D.C. | PHILLIP R. TRIMBLE
University of California, Los Angeles
School of Law |
| LORI FISLER DAMROSCH
Columbia University School of Law | PETER D. TROOBOFF
Washington, D.C. |
| MICHAEL J. GLENNON
University of California, Davis
School of Law | EDITH BROWN WEISS
Georgetown University Law Center |
| EDWARD GORDON
Washington, D.C. | BURNS H. WESTON
University of Iowa
College of Law |
| KEITH HIGHET
The George Washington University
Law School | |

CHARLOTTE KU, *ex officio*

Honorary Editors

- | | |
|---|---|
| RICHARD B. BILDER
University of Wisconsin Law School | STEFAN A. RIESENFELD
University of California, Berkeley
School of Law |
| RICHARD A. FALK
Princeton University | SEYMOUR J. RUBIN
Washington College of Law
The American University |
| THOMAS M. FRANCK
New York University School of Law | OSCAR SCHACHTER
Columbia University School of Law |
| LOUIS HENKIN
Columbia University School of Law | STEPHEN M. SCHWEBEL
The Hague, Netherlands |
| HAROLD K. JACOBSON
University of Michigan | LOUIS B. SOHN
The George Washington University
Law School |
| MONROE LEIGH
Washington, D.C. | ERIC STEIN
University of Michigan Law School |
| ANDREAS F. LOWENFELD
New York University School of Law | ROBERT VON MEHREN
New York, N.Y. |
| MYRES S. MCDUGAL
Yale Law School | RICHARD YOUNG
Van Hornesville, N.Y. |
| COVEY T. OLIVER
University of Pennsylvania Law School | |

Associate Editor

ANNA ASCHER

Editorial Assistant

AMY J. BERKS

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 whatever nationality and profession who are interested in its objectives. Dues are: regular, \$95; special category, \$55; intermediate, \$65; student, \$30. Sustaining Memberships—contributing (\$180), supporting (\$300), annual patrons (\$750) and patrons (\$7,500)—are also available. Corporations may join ASIL as institutional members (\$2,000). Membership information is printed at the back of each issue of the *AJIL*.

OFFICERS OF THE SOCIETY, 1996–1997

<i>Honorary President</i>	STEPHEN M. SCHWEBEL
<i>President</i>	CHARLES N. BROWER
<i>Vice Presidents</i>	JUDITH HIPPLER BELLO, LORI FISLER DAMROSCH, EDWIN M. SMITH
<i>Executive Vice President and Executive Director</i>	CHARLOTTE KU
<i>Past Presidents:</i> DAVID G. GILL, LOUIS HENKIN, KEITH HIGHET, MONROE LEIGH, MYRES S. MCDUGAL, COVEY T. OLIVER, WILLIAM D. ROGERS, LOUIS B. SOHN, JOHN R. STEVENSON, OSCAR SCHACHTER, PETER D. TROOBOFF, EDITH BROWN WEISS	
<i>Honorary Vice Presidents:</i> RICHARD B. BILDER, THOMAS BUERGENTHAL, MICHAEL H. CARDOZO, BARRY E. CARTER, MAXWELL COHEN, EDWARD DUMBAULD, RICHARD A. FALK, THOMAS M. FRANCK, JOHN LAWRENCE HARGROVE, RITA HAUSER, ROSALYN HIGGINS, LEONARD LEGAULT, CYNTHIA C. LICHTENSTEIN, LEONARD MEEKER, VED P. NANDA, FRANZ M. OPPENHEIMER, ELLIOT L. RICHARDSON, HENRY J. RICHARDSON III, STEFAN A. RIESENFELD, SEYMOUR J. RUBIN, ERIC STEIN, PAUL C. SZASZ, CYRUS R. VANCE	
<i>Secretary</i>	FREDERIC L. KIRGIS, JR.
<i>Treasurer</i>	JOSEPH GUTTENTAG
<i>Assistant Treasurer</i>	NANCY PERKINS

PATRONS OF THE SOCIETY

ARTHUR H. DEAN (deceased)	SEYMOUR J. RUBIN
HERMAN PHLEGER (deceased)	JOHN LAWRENCE HARGROVE
GENEVIEVE E. TILLAR (deceased)	FRANK A. BAUMAN
W. ROBERT MORGAN (deceased)	RICHARD W. EDWARDS, JR.
BRUNSON MACCHESNEY (deceased)	HUSSAM ALMESHAL
ALONA E. EVANS (deceased)	MRS. RICHARD BAXTER
JOHN N. HAZARD (deceased)	ENRIQUE P. SYQUIA
JOHN R. STEVENSON	RITA E. HAUSER
ARTHUR R. ALBRECHT	HOWARD M. HOLTZMANN
ALWYN V. FREEMAN (deceased)	ARTHUR W. ROVINE
EDWARD DUMBAULD	OSCAR SCHACHTER
KEITH HIGHET	BASIL S. YANAKAKIS
STEPHEN M. SCHWEBEL	GERALD AKSEN
WILLIAM D. ROGERS	ANTHONY D'AMATO
	EARL A. SNYDER

IN MEMORIAM

DR. JAMES BROWN SCOTT	ARTHUR K. KUHN
HENRY C. MORRIS	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), Leo Gross (1986), Robert Y. Jennings (1993), Louis Henkin (1995), and Louis B. Sohn (1996).

ORDERS AND INQUIRIES

Subscriptions, Back Issues and Cumulative Indexes: Orders and inquiries should be sent to the American Journal of International Law, 2223 Massachusetts Avenue, N.W., Washington, DC 20008-2864. Fax: (202) 797-7133. On-line at (<http://www.asil.org>). The *AJIL* (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. (For faster delivery outside the United States, members should enclose \$20 postage.) The annual subscription rate to nonmembers is \$125 (\$140 outside U.S.; \$160 airmail). Claims for undelivered issues must be made in writing within six months of the mailing date. Volumes 74 (1980) to date are available from the *AJIL* at \$140 per volume, \$40 per single issue. Volumes 1–73 (1907–1979) are available from Fred B. Rothman & Co., 10368 West Centennial Road, Littleton, CO 80127, U.S.A., toll-free 800-457-1986. Cumulative indexes are also available from the *AJIL*: 1941–1960, 1961–1970, and 1971–1980 at \$40; 1981–1990 at \$50.

Shipping/Handling: For back issues and indexes, add 20 percent for shipping and handling.

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

- On microform, from: William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209, U.S.A., toll-free 800-828-7571; and University Microfilms, 300 North Zeeb Road, Dept. P.R., Ann Arbor, MI 48106, U.S.A., toll-free 800-521-0600; or, 30–32 Mortimer Street, Dept. P.R., London W1N 7RA, England.
- On CD-ROM format, from: University Microfilms.
- Online through: Mead Data Central, Inc., provider of the LEXIS®/NEXIS® services, P.O. Box 933, Dayton, OH 45401, U.S.A., toll-free 800-227-9597; and West Publishing Company, provider of WESTLAW®, P.O. Box 64526, St. Paul, MN 55164-0526, U.S.A., toll-free 800-937-8529.

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: 0002-9300/95 \$5.00 + .25. Educational copying is permitted. Please address requests to CCC Academic Permissions Service: (508) 750-8400; fax (508) 750-4744.

Advertising: Inquiries should be sent to the Advertising Manager at the Washington, DC office. Phone: (202) 939-6003; fax (202) 797-7133.

AMERICAN JOURNAL OF INTERNATIONAL LAW

The views expressed in the articles, editorial comments, book reviews and notes, and 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 Editors in Chief of *AJIL*, Professors Theodor Meron and Detlev Vagts, New York University School of Law, 40 Washington Square South, New York, NY 10012-1005. U.S. residents are asked to submit four copies (one copy will be returned if the author so requests). Please do not submit manuscripts via facsimile. *AJIL* will not consider submissions whose content has been, or will be, published before it appears in this *Journal*.

Book reviews are by invitation: suggestions may be made to the Book Review Office, 2223 Massachusetts Avenue, N.W., Washington, DC 20008-2864. **Books for review** should be sent to the same office.

Format requirements: Articles and book reviews should be double-spaced, with double-spaced notes cumulated at the end of the manuscript. *AJIL* generally conforms to the footnote style of *The Bluebook: A Uniform System of Citation* (15th ed. 1991), published by the Harvard Law Review Association, Gannett House, 1511 Massachusetts Avenue, Cambridge, MA 02138.

Computer diskettes: Authors are invited to indicate whether the manuscript is available on an IBM-compatible diskette. *AJIL* uses WordPerfect 5.1.

INDEXES CARRYING *AJIL*

The *American Journal of International Law* is listed 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*; *Public International Law: A Current Bibliography of Books and Articles*; *Social Sciences Index*.

* * * *

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