# American Journal of International Law

October 1995 Vol. 89 No. 4



**Published by** 

The American Society of International Law

International Law Directory
<ul> <li>Need to locate a colleague?</li> <li>Contact someone with a particular international law interest?</li> </ul>
Explore the 1995-1996 ASIL Membership Directory!
The Society's 4,300 members are interested and involved in all branches of the discipline. The <i>Directory</i> allows you to reach these individuals quickly by providing addresses, telephone and fax numbers, and even e-mail addresses when applicable. Separate geographical and professional indexes, as well as full ASIL Interest Group listings, make the <i>Directory</i> even more versatile and useful. Only a limited number have been published — order your copy today!
YES! Please send me copies of the 1995-1996 ASIL Membership Directory
□ \$40 (ASIL member price) □ \$70 (Non-member price)
Directory Amount:       \$         Postage/Handling (20%):       \$         Total Amount:       \$
□ Check enclosed (payable to ASIL) □ Visa □ MasterCard Signature Card NoExp. Date
Shipping Address (please print or attach a business card):
THE AMERICAN SOCIETY OF INTERNATIONAL LAW 2223 Massachusetts Avenue NW  Washington DC 20008-2864 Phone: 202-939-6000  Fax: 202-797-7133

## AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 89

#### October 1995

#### CONTENTS

#### The Four Doctrines of Self-Executing Treaties

The U.S. law distinction between self-executing and non-self-executing treaties has long confounded courts and commentators. Professor Vázquez attributes much of the confusion to a failure to recognize that the so-called doctrine of self-executing treaties masks four distinct types of reasons why a treaty may not be judicially enforceable. In this article, he identifies the four distinct "doctrines" of self-executing treaties and the very different types of analysis they call for.

#### Central East Asian Maritime Boundaries and the Law of the Sea

Jonathan I. Charney Complex issues abound regarding the rights of the coastal states in the Sea of Japan, the Yellow Sea, the East China Sea and the South China Sea. New international law of the sea has changed some of the basic law applicable to the maritime boundary disputes in the area. Difficult relations between these states make resolution of the maritime and territorial claims problematic. Professor Charney suggests that interim cooperative non-boundary-based solutions might lead to the resolution of these maritime boundary issues.

#### Notes and Comments

Extraterritorial Application of American Law after the Insurance Antitrust Case: A Reply to Professors Lowenfeld and Trimble Larry Kramer	750
Correspondence	759
Contemporary Practice of the United States Relating to International Law Marian Nash (Leich)	761
International Decisions         Judith Hippler Bellow           Case notes by John R. Schmertz, Jr., and Richard Desgagné         Schwarz	772
Current Developments	
Implications for Fisheries Management of U.S. Acceptance of the 1982	
Convention on the Law of the Sea William T. Burke	792
Establishing the International Tribunal for the Law of the Sea	
Shabtai Rosenne The Procedural Framework of the Agreement Implementing the 1982 United Nations Convention on the Law of the Sea	806
Annick de Marffy-Mantuano	814
APEC Quo Vadis? David K. Linnan	824
Book Reviews and Notes Edited by Richard B. Bilder	
Chinkin, Christine. Third Parties in International Law (Stephen M. Schwebel) Childers, Erskine, and Brian Urquhart. Renewing the United Nations System	835
(Harold K. Jacobson)	837
Weiss, Thomas G., David P. Forsythe, and Roger A. Coate. The United Nations	
and Changing World Politics (Harold K. Jacobson)	837
Alger, Chadwick F., Gene M. Lyons, and John E. Trent (eds.). The United	
Nations System: The Policies of Member States (Harold K. Jacobson)	837

#### **NO. 4**

PAGE

695

724

Carlos Manuel Vázquez

Cook, Rebecca J. (ed.). Human Rights of Women: National and International	
Perspectives (Anthony D'Amato)	840
Clapham, Andrew. Human Rights in the Private Sphere (Henry J. Steiner)	844
Howard, Michael, George J. Andreopoulos, and Mark R. Shulman (eds.). The	
Laws of War: Constraints on Warfare in the Western World (Yoram Dinstein)	847
Reisman, W. Michael, and Chris T. Antoniou (eds.). The Laws of War: A	
Comprehensive Collection of Primary Documents on International Laws Governing	
Armed Conflict (Yoram Dinstein)	847
Cohn, Ilene, and Guy S. Goodwin-Gill. Child Soldiers: The Role of Children in	
Armed Conflicts (Frits Kalshoven)	849
Aldrich, G. H., and Th. A. van Baarda. Conference on the Rights of Children in	
Armed Conflict (Frits Kalshoven)	849
LeBlanc, Lawrence J. The Convention on the Rights of the Child. United Nations	
Lawmaking on Human Rights (Cynthia Price Cohen)	852
Alston, Philip (ed.). The Best Interests of the Child. Reconciling Culture and	
Human Rights (Cynthia Price Cohen)	852
Saulle, Maria Rita (ed.). The Rights of the Child. International Instruments	
(Cynthia Price Cohen)	852
Andreopoulos, George J. (ed.). Genocide. Conceptual and Historical Dimensions	
(Felice D. Gaer)	855
Charters, David A. (ed.). Democratic Responses to International Terrorism	
(Christopher L. Blakesley)	858
Kontou, Nancy. The Termination and Revision of Treaties in the Light of New	
Customary International Law (Gennady M. Danilenko)	859
Roach, J. Ashley, and Robert W. Smith. Excessive Maritime Claims (Bernard H.	
Oxman)	861
Mintzer, Irving M., and J. Amber Leonard (eds.). Negotiating Climate Change:	
The Inside Story of the Rio Convention (Alan E. Boyle)	864
Fisher, Louis. Presidential War Power (Covey T. Oliver)	865
Marceau, Gabrielle. Anti-Dumping and Anti-Trust Issues in Free Trade Areas	
(Robert A. Lipstein)	866
Krinsky, Michael, and David Golove (eds.). United States Economic Measures	
against Cuba. Proceedings in the United Nations and International Law Issues	
(Élizabeth Abi-Mershed)	868
Books Received	871
International Legal Materials. Contents, Vol. XXXIV, No. 4 (July 1995)	874
Table of Cases	876
Index	879

#### **BOARD OF EDITORS**

Editors in Chief THEODOR MERON DET NYU School of Law Harva

GEORGE H. ALDRICH The Hague, Netherlands JUDITH HIPPLER BELLO Washington, D.C. CHARLES N. BROWER Washington, D.C. THOMAS BUERGENTHAL The George Washington University Law School DAVID D. CARON University of California, Berkeley School of Law **JONATHAN I. CHARNEY** Vanderbilt University School of Law JOHN R. CROOK Washington, D.C. LORI FISLER DAMROSCH Columbia University School of Law MICHAEL J. GLENNON University of California, Davis School of Law EDWARD GORDON Washington, D.C.

KEITH HIGHET The George Washington University Law School

JOHN H. JACKSON University of Michigan Law School DETLEV F. VAGTS Harvard Law School

> FREDERIC L. KIRGIS, JR. Washington and Lee University School of Law

HAROLD HONGJU KOH Yale Law School

RICHARD B. LILLICH University of Virginia School of Law Florida State University College of Law

STEPHEN C. MCCAFFREY University of the Pacific McGeorge School of Law

BERNARD H. OXMAN University of Miami School of Law

W. MICHAEL REISMAN Yale Law School

ANNE-MARIE SLAUGHTER Harvard Law School

PHILLIP R. TRIMBLE University of California, Los Angeles School of Law

PETER D. TROOBOFF Washington, D.C.

EDITH BROWN WEISS Georgetown University Law Center

BURNS H. WESTON University of Iowa College of Law

CHARLOTTE KU, ex officio

#### Honorary Editors

RICHARD B. BILDER University of Wisconsin Law School

LOUIS HENKIN Columbia University School of Law

HAROLD K. JACOBSON University of Michigan

MONROE LEIGH Washington, D.C.

ANDREAS F. LOWENFELD New York University School of Law

MYRES S. MCDOUGAL 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 The George Washington University 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 Susan F. Hunt 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, 1995–1996**

Honorary President       OSCAR SCHACHTER         President       EDITH BROWN WEISS         Vice Presidents       M. LAURA BOCALANDRO, CHARLES N. BROWER, JONATHAN I. CHARNEY         Executive Vice President and Executive Director       CHARLOTTE KU
Honorary Vice Presidents: RICHARD B. BILDER, THOMAS BUERGENTHAL, MICHAEL H. CARDOZO, BARRY E. CARTER, MAXWELL COHEN, EDWARD DUMBAULD, DAVID G. GILL, JOHN LAWRENCE HARGROVE, RITA HAUSER, LOUIS HENKIN, ROSALYN HIGGINS, KEITH HIGHET, LEONARD LEGAULT, MONROE LEIGH, CYNTHIA C. LICHTENSTEIN, MYRES S. MCDOUGAL, LEONARD MEEKER, COVEY T. OLIVER, FRANZ M. OPPENHEIMER, ELLIOT L. RICHARDSON, HENRY J. RICHARDSON III, STEFAN A. RIESENFELD, WILLIAM D. ROGERS, SEYMOUR J. RUBIN, STEPHEN M. SCHWEBEL, LOUIS B. SOHN, ERIC STEIN, JOHN R. STEVENSON, PAUL C. SZASZ, PETER D. TROOBOFF
Secretary

#### PATRONS OF THE SOCIETY

ARTHUR H. DEAN (deceased) HERMAN PHLEGER (deceased) GENEVIEVE E. TILLAR (deceased) W. ROBERT MORGAN (deceased) BRUNSON MACCHESNEY (deceased) ALONA E. EVANS (deceased) JOHN N. HAZARD (deceased) **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. SYOULA RITA E. HAUSER HOWARD M. HOLTZMANN ARTHUR W. ROVINE OSCAR SCHACHTER BASIL S. YANAKAKIS GERALD AKSEN ANTHONY D'AMATO EARL A. SNYDER

#### 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), Leo Gross (1986), Robert Y. Jennings (1993), and Louis Henkin (1995).

#### **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. 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; Index to Foreign Legal Periodicals; Index to Legal Periodicals; Public International Law: A Current Bibliography of Books and Articles; Social Sciences Index.

\* \* \* \*

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

> Copyright © 1995 by The American Society of International Law Printed by Lancaster Press, Lancaster, PA 17604-3657