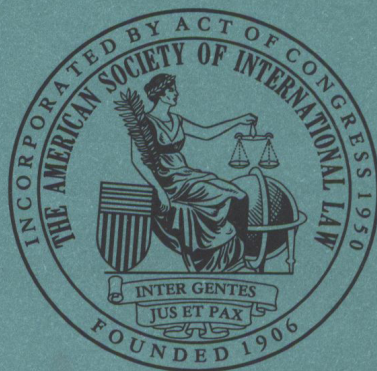


*American
Journal of
International
Law*

April 1996

Vol. 90 No. 2



Published by

The American Society of International Law



IMO



IMLI

IMO

INTERNATIONAL MARITIME LAW INSTITUTE

Established under the auspices of the International Maritime Organization
a specialized agency of the United Nations

ARE YOU INTERESTED IN SPECIALISING IN INTERNATIONAL MARITIME LAW?

IMLI offers a unique opportunity to be trained in one of the growth areas of International Law. Its one academic year programme, leading to the degree of Master of Laws, consists of highly specialized education in International Law, Law of the Sea, Shipping Law, Marine Environmental Law and Drafting of Maritime Legislation. Its full-time staff is supplemented by regular visits from eminent lawyers.

Visiting Fellows for Academic Year 1995-1996:

MR. W. BIRCH REYNARDSON (U.K., Titulary Member, Comite Maritime International); MR. A. BISHOP (U.K., Partner, Holman, Fenwick & Willan); M. PH. BOISSON (France, Legal Adviser, Bureau Veritas); PROF. R. FALK (U.S., Professor of International Law, Princeton University); MR. C. GOLDIE (U.K., Senior Partner, Thos. R. Miller); MR. P. GRIGGS (U.K., Secretary, British Maritime Law Association); COMMANDER N. HARRIS (HMS Illustrious); DR. R. HERBER (Germany, Law of the Sea and Maritime Law Institute, Hamburg); DR. W. MULLER (Switzerland, Titulary Member, CMI); DR. G. PLANT (U.K., London School of Economics); PROF. F.M.B. REYNOLDS (U.K., Professor of Law, University of Oxford); MR. R. SHAW (U.K., Research Fellow, University of Southampton); PROF. F.L. WISWALL (Jr.) (U.S., Titulary Member, Comite Maritime International).

This unique course is most suitable for law graduates working in the maritime field such as with a relevant Government department, a shipping company, port authority or other organisation concerned with shipping and maritime affairs. Law graduates who wish to pursue their careers in the field of international maritime law, will also benefit immensely from this course.

Applications are now invited for the eighth course which is scheduled to commence on 16th September, 1996. The course is limited to 20 students in any academic year thereby ensuring personal intensive guidance and supervision. Partial scholarships are available. A processing fee of US \$ 15 is required. For further information contact:

Prof. D.J. Attard, Director

IMO IMLI, P.O. Box 31, Msida MSD 01, MALTA

Fax No: (356) 343092; Tel. No: (356) 310816/319343

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 90

April 1996

NO. 2

CONTENTS

	PAGE
WTO Dispute Procedures, Standard of Review, and Deference to National Governments	
<i>Steven P. Croley & John H. Jackson</i>	193
<p>Professors Croley and Jackson consider the appropriate level of deference to national government decisions to be shown by dispute settlement bodies under the new WTO/GATT rules—a question that proved to be contentious during the Uruguay Round where some negotiators proposed an approach analogous to the U.S. <i>Chevron</i> doctrine. The authors examine the policy objectives of judicial review, both national and international, and argue that the justifications for the <i>Chevron</i> doctrine carry little weight in the international arena, though some deference is supportable on other grounds.</p>	
Evolution of the Governing Law for Loan Agreements of the World Bank and Other Multilateral Development Banks	
<i>John W. Head</i>	214
<p>The World Bank and the regional development banks have lent nearly half a trillion dollars over the past fifty years. Despite dramatic changes in international law in that period, there was no change in the governing-law provisions of the loan agreements used by these institutions until two years ago when one of the regional banks adopted a new governing-law clause. Professor Head explores the significance of this change and why it might serve as a model for the other multilateral development banks.</p>	
Editorial Comments	
The Yugoslav Tribunal: Use of Unnamed Witnesses Against Accused	
<i>Monroe Leigh</i>	235
The Continuing Role of Custom in the Formation of International Humanitarian Law	
<i>Theodor Meron</i>	238
Notes and Comments	
The International Legal Profession: A Need for More Governance?	
<i>Detlev F. Vagts</i>	250
Correspondence	261
Contemporary Practice of the United States Relating to International Law	
<i>Marian Nash (Leich)</i>	263
International Decisions	
<i>Edited by Judith Hippler Bello</i>	
Case notes by Peter A. Barcroft, Peter H. F. Bekker, Valerie Epps, and Juliane Kokott and Beate Rudolf	280
Current Developments	
The Protection of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia	
<i>Paul C. Szasz</i>	301
The Decisions Bridging the GATT 1947 and the WTO Agreement	
<i>Patrick M. Moore</i>	317
The 1995 Judicial Activity of the International Court of Justice	
<i>Peter H. F. Bekker</i>	328

Book Reviews and Notes

Edited by Richard B. Bilder

- Cassese, Antonio. *Self-Determination of Peoples. A Legal Reappraisal* (James Crawford) 331
- Simma, Bruno, et al. (eds.). *The Charter of the United Nations: A Commentary* (Frederic L. Kirgis, Jr.) 333
- Ratner, Steven R. *The New UN Peacekeeping: Building Peace in Lands of Conflict After the Cold War* (David D. Caron) 335
- Ramcharan, B. G. *The International Law and Practice of Early-Warning and Preventive Diplomacy* (Michael Bothe) 337
- Sands, Philippe, Richard Tarasofsky, and Mary Weiss (eds.). *Principles of International Environmental Law* (3 vols.) (Edith Brown Weiss) 338
- Bugnion, François. *La Comité International de la Croix-Rouge et la protection des victimes de la guerre* (David P. Forsythe) 339
- Röling, B. V. A., and Antonio Cassese. *The Tokyo Trial and Beyond* (James A. R. Nafziger) 342
- Teitelbaum, Michael S., and Myron Weiner (eds.). *Threatened Peoples, Threatened Borders. World Migration & U.S. Policy* (Stephen H. Legomsky) 344
- Lambert, Joseph J. *Terrorism and Hostages in International Law: A Commentary on the Hostages Convention 1979* (Christopher L. Blakesley) 346
- Muchlinski, Peter T. *Multinational Enterprises and the Law* (Alan C. Swan) 348
- Collected Essays:** *The British Year Book of International Law 1994* (Vol. 65), 351; *Recueil des Cours. Collected Courses of the Hague Academy of International Law* (Vol. 245), 351; *Recueil des Cours. Collected Courses of the Hague Academy of International Law* (Vol. 246), 351.
- Books Received** 352
- International Legal Materials. Contents, Vol. XXXV, No. 1 (January 1996)** 357

BOARD OF EDITORS

Editors in Chief

THEODOR MERON
NYU School of Law

DETLEV F. VAGTS
Harvard Law School

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

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

HAROLD HONGJU KOH
Yale Law School

RICHARD B. LILICH
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

RICHARD A. FALK
Princeton University

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. MCDUGAL
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

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, 1995–1996

<i>Honorary President</i>	OSCAR SCHACHTER
<i>President</i>	EDITH BROWN WEISS
<i>Vice Presidents</i>	M. LAURA BOCALANDRO, CHARLES N. BROWER, JONATHAN I. CHARNEY
<i>Executive Vice President and Executive Director</i>	CHARLOTTE KU
<i>Honorary Vice Presidents:</i> 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. MCDUGAL, 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. TROBOFF	
<i>Secretary</i>	FREDERIC L. KIRGIS, JR.
<i>Treasurer</i>	STEPHEN L. GIBSON
<i>Assistant Treasurer</i>	PATRICIA A. SHERMAN

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), 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 WIN 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*.

* * * *

Second-class 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.