AMERICAN
SOCIETY OF
INTERNATIONAL
LAW

PROCEEDINGS
of the
80th ANNUAL MEETING

WASHINGTON, D.C. APRIL 9-12, 1986

LIBRARY

OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

It is the policy of the American Society of International Law not to take an official position, by resolution or otherwise, upon controversial questions. The views expressed in the addresses, remarks and discussions delivered at its Annual Meetings and appearing in its printed PROCEEDINGS are those of the individual speakers and are not to be taken as representing the views of the Society.

COPYRIGHT © 1988 BY

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

2223 Massachusetts Avenue, N.W.

Washington, D.C. 20008

Authorization to photocopy items for internal or personal use, or 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 \$5.00 per copy plus .25 per page is paid directly to CCC, 27 Congress St., Salem, MA 01970. For those 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: 0272-5037/86 \$5.00 + .25.

#### ASSISTANT EDITOR'S NOTE

Publication of the *Proceedings* of the Society's 1986 Annual Meeting has been bedeviled by what has often seemed a wholly unbelievable combination of untoward circumstances. In addition, the *Proceedings'* record-breaking size reflects the continuing evolution of the Society's Annual Meeting in number, diversity, and intellectual richness of discussions, panels, and workshops. Thanks are due to all who assisted in the editing process, especially the Reporters, without whom it would be very difficult if not impossible to get the *Proceedings* done at all.

Particular thanks are due to Professor Anthony D'Amato who, when the Reporter assigned to the panel on The Authority of the U.S. Executive to Interpret, Articulate or Violate the Norms of International Law failed to discharge her responsibility, undertook to do the report himself.

An explanatory comment is perhaps in order here: the *Proceedings* do not purport to be a verbatim record of what transpired. Rather, Reporters are instructed to summarize what is said (even though rendering the summaries in first-person singular); in addition, all speakers are given the opportunity to edit the Reporter's version before it is published. This results, we believe, in a leaner but still accurate record of what occurred than would, for example, publication of transcripts. It is faithful to what actually was said, but is presented in the way that it ought to have been said—at least this is what we have tried to do—cast into written, rather than spoken, English.

JUDITH R. HALL Assistant Editor 1986 Proceedings Venice, Florida July 1988

# PROCEEDINGS OF THE EIGHTIETH ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

CHAIRMAN OF THE COMMITTEE ON THE ANNUAL MEETING Harold G. Maier EDITOR OF THE PROCEEDINGS

Richard W. Nelson

ASST. EDITOR: Judith R. Hall

### **CONTENTS**

### FEATURED ADDRESSES

Telford Taylor	5
Nuremberg: Forty Years After. M. Cherif Bassiouni	59
REMARKS BY: Richard A. Falk Yasuaki Onuma	6: 6'
Discussion	68
Strategic Arms Limitation: Treaty Obligations and the Strategic Defense Initiative	
Chairman: John Norton Moore	7:
Remarks by:	
John Norton Moore Chapman B. Cox Abram Chayes Abraham D. Sofaer John Rhinelander	73 74 78 82 83
DISCUSSION	9
International Law and the Influx of Aliens: Sanctuary and the Right to Exclude	
CHAIRMAN: David A. Martin	95
REMARKS BY:	
David A. Martin Guy S. Goodwin-Gill Joan F. Hartman	9: 90 102
Sanctuary: The Alternatives. Paul W. Schmidt	107
Discussion	111
Draft Code of Offenses Against the Peace and Security of Mankind	
CHAIRMAN: M. Cherif Bassiouni	120
REMARKS BY:  M. Cherif Bassiouni Stephen M. McCaffrey M. Cherif Bassiouni Sharon A. Williams Maria Frankowska Robert A. Friedlander	120 120 123 124 128
Discussion	133
	•••
United Nations Mediation of Regional Crises	124
CHAIRMAN: Frederic L. Kirgis	135
REMARKS BY: Frederic L. Kirgis Thomas M. Franck Richard W. Nelson Francesc Vendrell. Gay J. McDougall	136 136 139 143 145
Discussion	148
Comparative Approaches to the Theory of International Law	
CHAIRMAN: Mark W. Janis	152
REMARKS BY: Mark W. Janis	152
The Latin American Contribution to International Law. Hugo Caminos	157
REMARKS BY: David W. Kennedy	161

DISCUSSION	172
Reforming United Nations Human Rights Lawmaking	
CHAIRMAN: Louis B. Sohn	175
REMARKS BY: Theodor Meron	175
John Carey	178
Jerome J. Shestack	179
Paul C. Szasz	180
Panel Comments	185
Discussion	187
Expanding Uses of Presidential Emergency Economic Powers	
CHAIRMAN: Michael P. Malloy	190
REMARKS BY:  Michael P. Malloy  Gary Hufbauer  Robert M. Kimmitt  Arthur T. Downey	190 193 194 197
Discussion	198
The World Court	170
	201
CHAIRMAN: John R. Stevenson	201
REMARKS BY:  John R. Stevenson  Lori F. Damrosch	201 202
The United States and the World Court. Abraham D. Sofaer	204
REMARKS BY: Oscar Schachter Anthony D'Amato	210 214
Discussion	217
Subject Matter Jurisdiction and Foreign Governments: Act of State, Sovereign Immunity, and the Alien Tort Statute	
CHAIRMAN: Bruno A. Ristau	221
Modifications of the Act of State Doctrine. Stephen M. Boyd	221
REMARKS BY: Mark B. Feldman	224
The Alien Tort Act. Bruno A. Ristau	226
REMARKS BY: Davis R. Robinson	229
Discussion	230
International Unification of Private Law: The Multilateral Approach	
CHAIRMAN: Christopher Osakwe	233
REMARKS BY:	
Willem C. Vis  Donald T. Trautman  George Taft	233 237 240
DISCUSSION	244
Water Resources in the Middle East: Impact on Economics and Politics	
CHAIRMAN: Joseph W. Dellapenna	249
REMARKS BY: Joseph W. Dellapenna	249
Hydro-Geographic Background to the Utilization of International Rivers in the Middle East.	250

REMARKS BY:	
Thomas Naff	258
Stephen C. McCaffrey	261
Joseph W. Dellapenna	264
DISCUSSION	267
The United Nations and the Antarctic Treaty System	
Chairman: Christopher C. Joyner	269
INTRODUCTORY REMARKS: Christopher C. Joyner	269
Antarctica in the United Nations: Rethinking the Problems and Prospects.	240
Sudhir K. Chopra	269
Remarks by: David A. Colson	276
James Victor Gbeho.	279
Richard A. Falk	282
Discussion	285
Developing North American Trade Relations: Canada, Mexico and the Caribbean Basin	
CHAIRMAN: Theodore W. Kassinger	287
Remarks by:	
Harry Kopp	290
Pierre Gosselin	292
Discussion	294
The Authority of the United States Executive to Interpret, Articulate or Violate the Norms of International Law	
CHAIRMAN: Anthony D'Amato	297
Panel Discussion	297
Discussion	306
Permissible Measures and Obligations for Outside States and Internal Peoples Toward Minority	
Rule in South Africa	
CHAIRMAN: Henry J. Richardson III	308
REMARKS BY:	200
Henry J. Richardson III	308 310
Goler Teal Butcher Frank G. Wisner II	310
John Dugard	314
Jordan J. Paust	318
Winston Nagan	320
Discussion	322
Barriers to United States-Canada Trade: Problems and Solutions	
Chairman: John Wm. Reifenberg, Jr.	326
	320
REMARKS BY:  John Wm. Reifenberg, Jr	326
Donald S. Macdonald	320 327
Shelly P. Battram	330
W. Brian Rose	333
Richard W. Parker	335
Innathan T Faired	330

Discussion	34:
The Hong Kong Accord as a Model for Dealing with Other Disputed Territories	
CHAIRMAN: Herbert J. Hansell	348
Remarks by: Herbert J. Hansell Robert E. Lutz James V. Feinerman David H. Popper Hurst Hannum	348 349 353 360 364
DISCUSSION	368
Treaty Law and Outer Space: The Role of the United Nations	
CHAIRMAN: Stephen Gorove	36
REMARKS BY: Stephen Gorove N. Jasentuliyana Oscar Schachter Paul G. Dembling John E. O'Brien	369 369 379 379
COMMENTS BY:  Ved P. Nanda  Paul C. Szasz	383 383
Discussion	384
International Cooperation in the Prevention and Suppression of Terrorism	
CHAIRMAN: John F. Murphy	38
REMARKS BY:  John F. Murphy.  Geoffrey Levitt  Christopher H. Pyle  Yoram Dinstein  Alfred P. Rubin	386 386 396 396 406
Discussion	404
Human Rights: The 1966 Covenants Twenty Years Later	
CHAIRMAN: Jordan J. Paust	408
REMARKS BY: Anne F. Bayefsky	40
Supervising Implementation of the Covenants: The First Ten Years of the Human Rights  Committee. Dinah L. Shelton	41
U.S. Ratification of the Human Rights Covenants: Now or Ever? Richard B. Lillich	419
The U.N. Covenants and Regional Human Rights Systems. Thomas Buergenthal	42
Discussion	42:
WORKSHOPS	
Current Issues Involving Multinational Enterprises	
MODERATOR: Richard I. Fine	429
REMARKS BY: Richard I. Fine. Berry Sen H. Van Kirk Reeves David Taylor Sheldon Richman	42 <sup>9</sup> 42 <sup>9</sup> 43 <sup>1</sup> 43 <sup>1</sup> 43 <sup>1</sup>

Discussion	439
The Present State of the U.S. Trade Law: Its Impact on the Practitioner	
MODERATOR: W. George Grandison	440
REMARKS BY:  W. George Grandison Gary N. Horlick Veronica A. Haggart Peter O. Suchman Alan S. Holmer	440 443 445
Panel Comments	450
Discussion	453
Do Present Public International Law Casebooks Meet Teaching Needs? The Teachers Comment	
MODERATOR: Richard Bilder	456
REMARKS BY: Richard Bilder	456
New Directions for International Legal Studies Toward the End of the Twentieth Century.	
Francis A. Boyle	457
REMARKS BY: Daniel Magraw Phillip Trimble Larman Wilson	461
COMMENT BY: Fernando Tesón Michael Waxman	
Discussion	463
OPEN FORUMS	
Open Forum	
Presiding: Christopher C. Joyner	467
Reagan's Law and Foreign Policy, 1981-1986: The Reagan Corollary to International Law.  Stuart S. Malawer	467
Nuclear Weapon-Free Zones: Toward an International Framework. Eric J. McFadden	468
The Future of Compulsory Jurisdiction: Rethinking the Political Question Doctrine After Iran and Nicaragua. Ibrahim J. Wani	468
Importing Beef Into Japan: Legal Issues Under Japanese Law and the GATT.  David Fleshler	469
Student Open Forum	
PRESIDING: Heidi V. Jimenez	
Reconciling American and Civil-Law Concerns in Taking Evidence Abroad: A Reevaluation of the Compromise from the Hague. Joan M. Betti	469
Shielding Nonresident Aliens from the Reach of Administrative Subpoena Under the Comity Exchange Act. John J. Balitis, Jr.	469
Strategic Defense Initiative and the New Interpretation of the ABM Treaty.  Johanna M. Klema	469
Simultaneous Rediffusion by Cable Television Operators in Canada and the Problem of	
Nonpayment of Copyright Royalties. Laurence S. Seidenberg	470

## JESSUP COMPETITION

The 1986 Philip C. Jessup International Law Moot Court Competition	473
APPENDICES	
Business Meeting	
Eulogies	475
Report of the Executive Director	47
Election of Officers and Executive Council	482
Announcement of Awards	483
Report of the Committee on Regional Meetings	484
Report of the Editor-in-Chief of the American Journal of International Law	484
Elections to the Advisory Committee of International Legal Materials	484
Comments by the President	484
Officers and Committees of the American Society of International Law for 1986-1987	486
American Journal of International Law: Board of Editors	488
International Legal Materials	489
Board of Review and Development	490
Report of the Committee on Publications of the Department of State and the United Nations	49
Benefactors	499
1986 Annual Meeting: Registrants and Participants	502
Constitution of the American Society of International Law	
Act of Incorporation	509
Constitution	513
Regulations	513
Indexes	529
Table of Cases	529
Treaties, Conventions and Agreements	53
Index	534