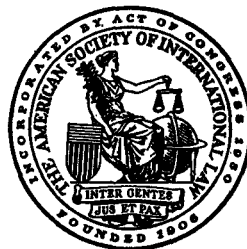


*American
Journal of
International
Law*

**VOLUME 72
1978**



Published by

American Society of International Law

BOARD OF EDITORS

Editors-in-Chief

OSCAR SCHACHTER LOUIS HENKIN
Columbia University School of Law

RICHARD B. BILDER University of Wisconsin Law School	ANDREAS F. LOWENFELD New York University
THOMAS BUERGENTHAL University of Texas at Austin School of Law	JOHN NORTON MOORE University of Virginia Law School
INIS L. CLAUDE, JR. University of Virginia	WILLIAM M. REISMAN Yale Law School
JEROME A. COHEN Harvard Law School	ARTHUR W. ROVINE Washington, D. C.
ALONA E. EVANS Wellesley College	SEYMOUR J. RUBIN Washington College of Law, American University
RICHARD A. FALK Princeton University	STEPHEN M. SCHWEBEL Washington, D. C.
ARGHYRIOS FATOUROS Indiana University School of Law	LOUIS B. SOHN Harvard Law School
THOMAS M. FRANCK New York University	ERIC STEIN University of Michigan Law School
ROSALYN HIGGINS University of Kent, at Canterbury	DETLEV F. VAGTS Harvard Law School
MONROE LEICH Washington, D. C.	BURNS H. WESTON University of Iowa School of Law
RICHARD B. LILlich University of Virginia Law School	RICHARD YOUNG Van Hornesville, N.Y.

Honorary Editors

WILLIAM W. BISHOP, JR. University of Michigan Law School	PHILIP C. JESSUP New York, N.Y.
HERBERT W. BRIGGS Cornell University	OLIVER J. LISSITZYN Columbia University School of Law
HARDY C. DILLARD University of Virginia Law School	MYRES S. MCDUGAL Yale Law School
ALWYN FREEMAN Beverly Hills, Calif.	COVEY T. OLIVER University of Pennsylvania Law School
LEO GROSS Fletcher School of Law and Diplomacy, Tufts University	PITMAN B. POTTER American University
JOHN N. HAZARD Columbia University School of Law	STEFAN A. RIESENFELD University of California Law School
JAMES NEVINS HYDE New York, N.Y.	MARJORIE M. WHITEMAN Liberty Center, Ohio

Editorial Assistant

ROSEMARY G. CONLEY

Assistant Editor Emerita

ELEANOR H. FINCH

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOLUME 72

CONTENTS

1978

[No. 1, January 1978, pp. 1-246; No. 2, April 1978, pp. 247-511;
No. 3, July 1978, pp. 513-745; No. 4, October 1978, pp. 747-1020.]

	PAGE
Of Missionaries, Fanatics, and Lawyers: Some Thoughts on Investment Disputes in the Americas <i>William D. Rogers</i>	1
Coercion and Foreign Investment Rearrangements <i>Detlev F. Vagts</i>	17
The Recruitment and Use of Mercenaries in Armed Conflict <i>H. C. Burmester</i>	37
The Third United Nations Conference on the Law of the Sea: The 1977 New York Session <i>Bernard H. Oxman</i>	57
The United States and the Issue of the Binding or Voluntary Nature of International Codes of Conduct Regarding Restrictive Business Practices <i>Joel Davidow & Lisa Chiles</i>	247
Legal Management of Internal War: The 1977 Protocol on Non-International Armed Conflict <i>David P. Forsythe</i>	272
A Formula for Tax-Sparing Credits in the U.S. Tax Treaties with Developing Countries <i>Howard M. Liebman</i>	296
The People's Republic of China and the Charter-Based International Legal Order <i>Samuel S. Kim</i>	317
The U.S. Generalized System of Preferences for Developing Countries: International Innovation and the Art of the Possible <i>Thomas R. Graham</i>	513
Applicability of Multilateral Conventions to Occupied Territories <i>Theodor Meron</i>	542
May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez <i>Brice M. Clagett and O. Thomas Johnson, Jr.</i>	558
The Palestinian Refugees: The Right to Return in International Law <i>Kurt René Radley</i>	586
The Jurisprudence of International Trade: The DISC Case in GATT <i>John H. Jackson</i>	747
International Protection of the Baltic Sea Environment Against Pollution <i>Boleslaw A. Boczek</i>	782
The Function of the Oath in the Ancient Near Eastern International Treaty <i>Donald L. Magnetti</i>	815
Declarations by Judges of the International Court of Justice <i>Farrokh Jhabvala</i>	830

	PAGE
Editorial Comments	
Foreign Policy and the 1977 Soviet Constitution	<i>John N. Hazard</i> 350
Brunson MacChesney	<i>R. R. Baxter</i> 615
Notes and Comments	
Law of the Sea—The Integration of the System of Settlement of Disputes under the Draft Convention as a Whole	<i>A. O. Adede</i> 84
The United Kingdom–France Continental Shelf Arbitration	<i>David A. Colson</i> 95
International Law in War College Perspective	<i>William H. Witt</i> 112
The Research and Study Activities of the American Society of International Law: Report of the Director of Studies, 1975–1977	<i>John Lawrence Hargrove</i> 356
Trust Funds in International Law	<i>Joseph Gold</i> 856
The 50-Mile Military Boundary Zone of North Korea	<i>Choon-ho Park</i> 866
A New Restatement of the Foreign Relations Law of the United States	<i>R. R. Baxter</i> 875
Correspondence	116, 373, 616, 878
Contemporary Practice of the United States Relating to International Law	<i>John A. Boyd & Marian L. Nash</i> 119, 375, 620, 879
Judicial Decisions	<i>Alona E. Evans</i> 147, 410, 662, 923
Book Reviews and Notes	<i>Edited by Leo Gross</i> 161, 422, 675, 929
Books Received	223, 453, 709, 966
Official Documents	
Panama-United States	
Panama Canal Treaty	225
Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal	238
Protocol to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal	241
Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts	
Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I)	457
Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)	502
United States	
Nuclear Non-Proliferation Act of 1978	712
United Nations Conference on Succession of States in Respect of Treaties	
Vienna Convention on Succession of States in Respect of Treaties	971
International Legal Materials. Contents, Vol. XVI, Nos. 5–6 (1977); Vol. XVII, Nos. 1–4 (1978)	243, 510, 743, 970
Table of Cases	
Index	

The views expressed in the articles, editorial comments, book reviews, and notes, and other contributions which appear in AJIL are those of the individual authors and are not to be taken as representing the views of the Board of Editors or of The American Society of International Law.

Manuscripts in triplicate may be sent to the Editors-in-Chief of AJIL, Professors Oscar Schachter and Louis Henkin, Columbia University School of Law, New York, N.Y. 10027. Subscriptions, orders for back numbers, correspondence with reference to the JOURNAL, and books for review should be sent to the AMERICAN JOURNAL OF INTERNATIONAL LAW, 2223 Massachusetts Avenue, N.W., Washington, D. C. 20008.

AJIL is published in January, April, July, and October and is supplied to all members of The American Society of International Law. The annual subscription to nonmembers of the Society is \$36.00. Available back numbers of AJIL will be supplied at \$9.00 a copy.

EDITORIAL OFFICE:

Box 44
COLUMBIA UNIVERSITY SCHOOL OF LAW
NEW YORK, N.Y. 10027

BUSINESS OFFICE:

2223 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20008

Copyright © 1978 by The American Society of International Law
Second-class postage paid at Washington, D. C. and additional mailing office
Printed by Lancaster Press, Lancaster, PA. 17604

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 72

January, 1978

NO. 1

CONTENTS

	PAGE
Of Missionaries, Fanatics, and Lawyers: Some Thoughts on Investment Disputes in the Americas <i>William D. Rogers</i>	1
Coercion and Foreign Investment Rearrangements <i>Detlev F. Vagts</i>	17
The Recruitment and Use of Mercenaries in Armed Conflict <i>H. C. Burmester</i>	37
The Third United Nations Conference on the Law of the Sea: The 1977 New York Session <i>Bernard H. Oxman</i>	57
Notes and Comments	
Law of the Sea—The Integration of the System of Settlement of Disputes under the Draft Convention as a Whole <i>A. O. Adede</i>	84
The United Kingdom—France Continental Shelf Arbitration <i>David A. Colson</i>	95
International Law in War College Perspective <i>William H. Witt</i>	112
Correspondence	116
Contemporary Practice of the United States Relating to International Law <i>John A. Boyd</i>	119
Judicial Decisions <i>Alona E. Evans</i>	147
Book Reviews and Notes <i>Edited by Leo Gross</i>	
Reisman, Michael, and Burns Weston (eds.). <i>Toward World Order and Human Dignity. Essays in Honor of Myres S. McDougal.</i>	161
Rousseau, Charles. <i>Droit international public. Tome III. Les compétences.</i>	163
Verdross, Alfred, and Bruno Simma. <i>Universelles Völkerrecht. Theorie und Praxis.</i>	167
Schermers, Henry G. <i>International Institutional Law. Vol. I, Structure; Vol. II, Functioning and Legal Order; Vol. III, Teaching and Materials.</i>	168
Hague Academy. <i>Recueil des Cours, 1974.</i>	170
U.S. Air Force. <i>International Law—The Conduct of Armed Conflict and Air Operations.</i>	174
Rosas, Allan. <i>The Legal Status of Prisoners of War.</i>	176
Giuliano, Mario. <i>Diritto internazionale.</i>	178
Conforti, Benedetto. <i>La Nazioni Unite. Lezioni di Organizzazione internazionale.</i>	179
de Vries, Margaret. <i>The International Monetary Fund, 1966–1971: The System Under Stress. Vol. I, Narrative. Vol. II, Documents.</i>	181
Bloomfield, Louis M., and Gerald F. FitzGerald. <i>Crimes against Internationally Protected Persons: Prevention and Punishment—An Analysis of the UN Convention.</i>	183
Lapidoth, Ruth. <i>Freedom of Navigation, With Special Reference to International Waterways in the Middle East.</i>	184
Churchill, Robin, Myron Nordquist, and S. Houston Lay. <i>New Directions in the Law of the Sea. Vol. V: Documents; Vol. VI: Documents and Index to Volumes I-VI.</i>	185

Gorove, Stephen. <i>Studies in Space Law: Its Challenges and Prospects.</i>	187
Meijers, H., and E. W. Vierdag (eds.). <i>Essays on International Law and Relations in Honour of A. J. P. Tammes.</i>	189
Schermers, Henry G. <i>Judicial Protection in the European Communities.</i>	191
Weber, Nikolaus. <i>Die Richtlinie im EWG-Vertrag.</i>	192
Plouvier, Liliane. <i>Les Décisions de la Cour de Justice des Communautés Européennes et Leurs Effets Juridiques.</i>	193
Arndt, Claus. <i>Die Verträge von Moskau und Warschau.</i>	194
Bray, Wayne D. <i>The Common Law Zone in Panama: A Case Study in Reception.</i>	195
—, <i>The Controversy Over a New Canal Treaty Between the United States and Panama.</i>	
Kahn-Freund, Otto. <i>General Problems of Private International Law.</i>	196
Guggenheim, Paul (compiler). <i>Répertoire suisse de droit international public. Documentaire concernant la Confédération en matière de droit international public 1914–1939.</i>	197
<i>Soviet Yearbook of International Law 1974.</i>	199
Kavass, Igor I., and Michael J. Blake (compilers and eds.). <i>United States Legislation on Foreign Relations and International Commerce.</i>	200
<i>Chung-hua jen-min kung-ho-kuo t'iao-yueh chi</i> (Compilation of Treaties of the People's Republic of China).	202
Briefer Notices: Melzer, 204; Simmonds, 205; Oda, 206; Papadakis, 206; Klemm, 207; Ringear, 208; Marwah and Schulz (eds.), 208; Tesauero, 209; Plischke, 210; Meissner, 211; Bossuyt, 212; Sundberg-Weitman, 212; Giese, 213; Claude (ed.), 214; Thürer, 215; Davis, 215; Fischer and Vignes, 216; Levin, 217; Freymond and Galvani, 218; Loeber (ed.), 218; Friesen, 219; Gordenker, 220; Picone and Wengler (eds.), 221; <i>The Year Book of World Affairs, 1977, 222.</i>	
Books Received	223

OFFICIAL DOCUMENTS

Panama–United States	
Panama Canal Treaty	225
Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal	238
Protocol to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal	241
International Legal Materials. Contents, Vol. XVI, No. 5 (September) and No. 6 (November) 1977	243

The views expressed in the articles, editorial comments, book reviews, and notes, and other contributions which appear in the JOURNAL are those of the individual authors and are not to be taken as representing the views of the Board of Editors or of The American Society of International Law.

Manuscripts in triplicate may be sent to the Editor-in-Chief of the JOURNAL, Professor R. R. Baxter, Harvard Law School, Cambridge, Mass. 01238 (Tel. 617-495-3132), or to the Assistant Editor. Subscriptions, orders for back numbers, correspondence with reference to the JOURNAL, and books for review should be sent to the AMERICAN JOURNAL OF INTERNATIONAL LAW, 2223 Massachusetts Avenue, N.W., Washington, D. C. 20008.

The JOURNAL is published in January, April, July, and October and is supplied to all members of The American Society of International Law. The annual subscription to nonmembers of the Society is \$36.00. Available back numbers of the JOURNAL will be supplied at \$9.00 a copy.

EDITORIAL AND EXECUTIVE OFFICE:
2223 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D. C. 20008

PUBLICATION OFFICE:
PRINCE AND LEMON STREETS
LANCASTER, PA. 17604

Copyright © 1978 by The American Society of International Law

Second-class postage paid at Washington, D. C. and additional mailing office

BOARD OF EDITORS

Editor-in-Chief

RICHARD R. BAXTER
Harvard Law School

RICHARD B. BILDER
University of Wisconsin Law School

THOMAS BUERGENTHAL
University of Texas at Austin School of
Law

INIS L. CLAUDE, JR.
University of Virginia

JEROME A. COHEN
Harvard Law School

ALONA E. EVANS
Wellesley College

RICHARD A. FALK
Princeton University

THOMAS M. FRANCK
New York University

LOUIS HENKIN
Columbia University School of Law

ROSALYN HIGGINS
London School of Economics and
Political Science

MONROE LEIGH
Washington, D. C.

RICHARD B. LILLICH
University of Virginia Law School

STANLEY D. METZGER
Georgetown University Law Center

JOHN NORTON MOORE
University of Virginia Law School

WILLIAM M. REISMAN
Yale Law School

ARTHUR W. ROVINE
Washington, D. C.

OSCAR SCHACHTER
Columbia University School of Law

STEPHEN M. SCHWEBEL
Washington, D. C.

LOUIS B. SOHN
Harvard Law School

ERIC STEIN
University of Michigan Law School

JOHN R. STEVENSON
New York, N.Y.

DETLEV F. VAGTS
Harvard Law School

BURNS H. WESTON
University of Iowa School of Law

RICHARD YOUNG
Van Hornesville, N.Y.

Honorary Editors

WILLIAM W. BISHOP, JR.
University of Michigan Law School

HERBERT W. BRIGGS
Cornell University

HARDY C. DILLARD
University of Virginia Law School

ALWYN FREEMAN
Beverly Hills, Calif.

LEO GROSS
Fletcher School of Law and
Diplomacy, Tufts University

JOHN N. HAZARD
Columbia University School of Law

JAMES NEVINS HYDE
New York, N.Y.

PHILIP C. JESSUP
New York, N.Y.

OLIVER J. LISSITZYN
Columbia University School of Law

BRUNSON MACCHESNEY
Northwestern University School of Law

MYRES S. MCDUGAL
Yale Law School

PITMAN B. POTTER
American University

STEFAN A. RIESENFELD
University of California Law School

MARJORIE M. WHITEMAN
Liberty Center, Ohio

JOHN B. WHITTON
Princeton University

Assistant Editor

ANNE PATRICIA SIMONS

Editorial Assistant

ROSEMARY G. CONLEY

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."

The Society serves as a meeting place and forum for scholars, teachers, officials, lawyers, and others, from some one hundred countries. In April, it holds a three-day Annual Meeting at which current problems of international law are discussed. The Society also sponsors regional meetings outside of Washington in cooperation with other institutions. Salient questions of international law and relations are considered in depth by panels and study groups organized by the Society's Board of Review and Development. Works of scholarship are often published under the Society's auspices in connection with studies sponsored by the Board, many in the Society's series of *Studies in Transnational Legal Policy*.

The Society periodically issues four publications:

The American Journal of International Law, the leading journal in the field of international law, has been published since 1907. The *Proceedings of the American Society of International Law* carries the papers and discussion of the annual meeting of the Society. Both are distributed to all members of the Society without additional charge, and are available to nonmembers at a subscription rate of \$36 a year.

International Legal Materials, a bimonthly, is a unique international collection of texts of current official documents, including legislation, treaties, court decisions, and reports. Subscription rates are \$20 a year for members of the Society, \$55 for others.

The quarterly *Newsletter* provides members with news of the Society and other organizations in the field.

Society membership is open to all persons of whatever nationality and profession who are interested in its objectives. Dues are: regular, \$30 for residents of the United States, \$22 for non-residents; professional, \$40; intermediate, \$15; student, \$10. (\$15 of membership fee is allotted to AJIL subscription.) Membership application form is printed at the back of each issue of AJIL.

OFFICERS OF THE SOCIETY, 1977-1978

<i>Honorary President</i>	ARTHUR H. DEAN
<i>President</i>	WALTER STERLING SURREY
<i>Vice Presidents</i>	ALONA E. EVANS, C. CLYDE FERGUSON, LEONARD C. MEEKER
<i>Executive Vice President and Executive Director</i>	SEYMOUR J. RUBIN
<i>Honorary Vice Presidents:</i>	RICHARD R. BAXTER, WILLIAM W. BISHOP, JR., HERBERT W. BRIGGS, HARDY C. DILLARD, LEO GROSS, JOHN N. HAZARD, JAMES N. HYDE, PHILIP C. JESSUP, HAROLD D. LASSWELL, MONROE LEIGH, BRUNSON MACCHESNEY, MYRES S. MCDUGAL, FRANZ M. OPPENHEIMER, WILLIAM D. ROGERS, DEAN RUSK, OSCAR SCHACHTER, JOHN R. STEVENSON, MARJORIE M. WHITEMAN.
<i>Secretary</i>	EDWARD DUMBAULD
<i>Treasurer</i>	JAMES R. PATTON, JR.
<i>Assistant Treasurer</i>	JAMES C. CONNER