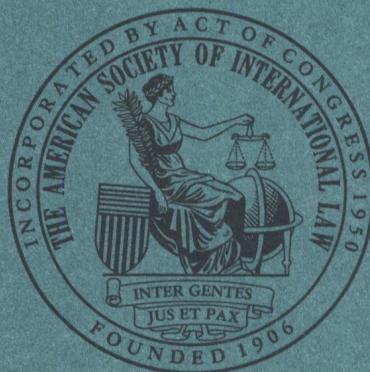


*American
Journal of
International
Law*

April 1998

Vol. 92 No. 2



Published by

The American Society of International Law

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 92

April 1998

NO. 2

CONTENTS

	PAGE
Reconciling Extradition with Human Rights <i>John Dugard and Christine Van den Wyngaert</i>	187
<p>Human rights considerations are increasingly invoked as a bar to extradition. This article examines this development, paying particular attention to the human rights most likely to obstruct extradition. In suggesting methods of balancing the competing interests of human rights and international cooperation in the suppression of crime, the authors consider the increased use of conditional extradition. They propose that extradition laws should expressly accommodate human rights interests.</p>	
Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity <i>Burrus M. Carnahan</i>	213
<p>Military necessity was first stated as a legal principle in General Orders No. 100, a codification of the law of war drafted by Francis Lieber and issued by President Lincoln in 1863. Controversial from the beginning, the principle was nevertheless intended as a new restraint on military discretion, as Lincoln's application of it during the Civil War demonstrates. Military necessity remains an important restraint on military operations in new situations for which specific rules have yet to be established.</p>	
Editorial Comments	
Restitution for Historic Wrongs, the American Courts and International Law <i>Detlev F. Vagts</i>	232
Classification of Armed Conflict in the Former Yugoslavia: <i>Nicaragua's</i> Fallout <i>Theodor Meron</i>	236
Correspondence	242
Contemporary Practice of the United States Relating to International Law <i>Marian Nash (Leich)</i>	243
International Decisions <i>Edited by Bernard H. Oxman</i>	273
Gabčíkovo-Nagymaros Project <i>Peter H. F. Bekker</i>	
<p>International Court of Justice Judgment on continuing effect of 1977 treaty between Czechoslovakia and Hungary regarding Danube River project</p>	
The M/V "Saiga" <i>Bernard H. Oxman</i>	
<p>First judgment by International Tribunal for the Law of the Sea, applying new procedure for prompt release on bond of detained vessel and crew</p>	
Prosecutor v. Erdemović <i>Olivia Swaak-Goldman</i>	
<p>Appellate opinion of International Criminal Tribunal for the former Yugoslavia on guilty pleas and on duress as defense to homicide</p>	
Well Blowout Control Claim <i>Roger P. Alford</i>	
<p>Decision by Governing Council of UN Compensation Commission on Kuwaiti claims for cost of extinguishing oil well fires set during Iraqi occupation</p>	
Portuguese Republic v. Council <i>Juliane Kokott and Frank Hoffmeister</i>	
<p>European Court of Justice ruling on Community competence to include human rights and democracy commitments in cooperation agreements with developing countries</p>	

Marschall v. Land Nordrhein-Westfalen	<i>Julie A. Mertus</i>	
European Court of Justice decision on employment discrimination and positive action to encourage hiring and promotion of women		
Japan v. Kim Sun-Ki	<i>Hee Kwon Park</i>	
Japanese ruling on arrest of South Korean fishing boat in light of 1965 agreement requiring consultation prior to adoption of straight baselines		
Caglar v. H.M. Inspector of Taxes	<i>David Turns</i>	
British tax decision on status of Turkish Republic of Northern Cyprus and its Turkish Cypriot employees in the UK		
Doe v. Unocal	<i>William J. Aceves</i>	
U.S. district court ruling in action by Burmese farmers for human rights violations against their persons and property		

Current Developments

The Kyoto Protocol to the United Nations Framework Convention on Climate Change		
<i>Clare Breidenich, Daniel Magraw, Anne Rowley and James W. Rubin</i>		315
The Fifth Session of the UN Preparatory Committee on the Establishment of an International Criminal Court	<i>Christopher Keith Hall</i>	331
UN Compensation Commission Panel Sets Precedents on Government Claims	<i>Veijo Heiskanen and Robert O'Brien</i>	339
The 1997 Judicial Activity of the International Court of Justice	<i>Peter H. F. Bekker</i>	350

Book Reviews and Notes

Edited by Richard B. Bilder

Shahabuddeen, Mohamed. <i>Precedent in the World Court</i> (Rudolf Bernhardt)		352
Sabel, Robbie. <i>Procedure at International Conferences: A Study of the Rules of Procedure of Conferences and Assemblies of International Inter-governmental Organizations</i> (Philip Alston)		353
Valencia, Mark J., Jon M. Van Dyke, and Noel A. Ludwig. <i>Sharing the Resources of the South China Sea</i> (Choon-ho Park)		354
Butler, William E. <i>The Russian Law of Treaties</i> (Gennady M. Danilenko)		356
Conforti, Benedetto. <i>The Law and Practice of the United Nations</i> (Yehuda Z. Blum)		358
Duursma, Jorri C. <i>Fragmentation and the International Relations of Micro-States</i> (Gregory H. Fox)		359

Collected Essays: *Recueil des Cours. Collected Courses of the Hague Academy of International Law 1996* (Vol. 260), 362.

Books Received 362

International Legal Materials. Contents, Vol. XXXVII, No. 1 (January 1998) 366

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
Georgetown University Law Center |
| JOSÉ E. ALVAREZ
University of Michigan Law School | BENEDICT KINGSBURY
Duke University School of Law |
| 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 | MICHAEL J. MATHESON
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 | ANNE-MARIE SLAUGHTER
Harvard Law School |
| CHRISTINE M. CHINKIN
London School of Economics | PHILLIP R. TRIMBLE
University of California, Los Angeles
School of Law |
| JOHN R. CROOK
Washington, D.C. | PETER D. TROOBOFF
Washington, D.C. |
| LORI FISLER DAMROSCH
Columbia University School of Law | EDITH BROWN WEISS
Georgetown University Law Center |
| MICHAEL J. GLENNON
University of California, Davis
School of Law | BURNS H. WESTON
University of Iowa
College of Law |
| KEITH HIGHET
Washington, D.C. | |

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

RENEE S. BROWN

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, \$125; special category, \$90; intermediate, \$95; student, \$45. Sustaining Memberships—contributing (\$225), supporting (\$350), annual patrons (\$825) and patrons (\$7,500)—are also available. Corporations may join ASIL as institutional members (\$2,000).

OFFICERS OF THE SOCIETY, 1997–1998

<i>Honorary President</i>	STEPHEN M. SCHWEBEL
<i>President</i>	CHARLES N. BROWER
<i>Vice Presidents</i>	LORI FISLER DAMROSCH, SUSAN L. KARAMANIAN, 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, OSCAR SCHACHTER, LOUIS B. SOHN, PETER D. TROOBOFF, EDITH BROWN WEISS	
<i>Honorary Vice Presidents:</i> RICHARD B. BILDER, THOMAS BUERGENTHAL, BARRY E. CARTER, MAXWELL COHEN, RICHARD A. FALK, THOMAS M. FRANCK, JOHN LAWRENCE HARGROVE, RITA E. HAUSER, ROSALYN HIGGINS, JOHN H. JACKSON, VIRGINIA A. LEARY, LEONARD LEGAULT, CYNTHIA C. LICHTENSTEIN, ANDREAS F. LOWENFELD, VED P. NANDA, FRANZ M. OPPENHEIMER, W. MICHAEL REISMAN, 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
<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)	HUSAM MESHAL
ALONA E. EVANS (deceased)	MRS. RICHARD BAXTER
JOHN N. HAZARD (deceased)	ENRIQUE P. SYQUIA
JOHN R. STEVENSON (deceased)	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
	BURNS H. WESTON

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), Louis B. Sohn (1996), and John R. Stevenson (1997).

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 *American Journal of International Law* (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. The annual subscription rate to nonmembers is \$140 (\$175 outside U.S.). Claims for undelivered issues must be made in writing within six months of the mailing date. Volumes 79 (1985) to date are available from the *AJIL* at \$160 per volume, \$45 per single issue. Volumes 1-78 (1907-1984) 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: 0002-9300/98 \$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 Services Center at the Washington, DC office. Phone: (202) 939-6003; fax (202) 797-7133.

* * * *

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.

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* (16th ed. 1996), 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 included 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*; *International Political Science Abstracts*; *Public International Law: A Current Bibliography of Books and Articles*; *Social Sciences Index*.