

THE
AMERICAN JOURNAL
OF
INTERNATIONAL LAW



VOLUME 61

1967

PUBLISHED BY

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

(Incorporated by Act of Congress, Sept. 20, 1950)

PUBLICATION OFFICE:
LANCASTER PRESS, INC.
LANCASTER, PA. 17604

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

Copyright © 1967 by The American Society of International Law

BOARD OF EDITORS

Editor-in-Chief

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

RICHARD R. BAXTER
Harvard Law School

HARDY C. DILLARD
University of Virginia Law School

ALONA E. EVANS
Wellesley College

RICHARD A. FALK
Princeton University

ALWYN V. FREEMAN
Detroit, Michigan

LEO GROSS
Fletcher School of Law and Diplomacy,
Tufts University

JOHN N. HAZARD
Columbia University School of Law

LOUIS HENKIN
Columbia University School of Law

JAMES NEVINS HYDE
New York, N. Y.

OLIVER J. LISSITZYN
Columbia University

BRUNSON MACCHESNEY
Northwestern University Law School

MYRES S. McDOUGAL
Yale Law School

STANLEY D. METZGER
Georgetown University Law Center

STEFAN A. RIESENFELD
University of California Law School

OSCAR SCHACHTER
New York, N. Y.

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.

RICHARD YOUNG
Van Hornesville, N. Y.

Honorary Editors

HERBERT W. BRIGGS
Cornell University

CHARLES G. FENWICK
Washington, D. C.

HANS KELSEN
University of California

JOSEF L. KUNZ
University of Toledo

PITMAN B. POTTER
American University

JOHN B. WHITTON
Princeton University

ROBERT R. WILSON
Duke University

QUINCY WRIGHT
University of Virginia

Secretary of the Board of Editors

ELEANOR H. FINCH

The object of The American Society of International Law is to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice. For this purpose it co-operates with similar societies in this and other countries.

Membership in the Society is open to all persons of good moral character interested in the objectives of the Society. Membership dues are: Regular, \$15.00 for residents of the United States, \$10.00 for non-residents; professional, \$30.00; intermediate, \$10.00; student, \$5.00. Application forms and further information may be obtained from the Membership Secretary of the Society at the address given below.

The JOURNAL is published quarterly and is supplied to all members of The American Society of International Law without extra charge. The annual subscription to non-members of the Society is \$15.00 and includes subscription to the *Proceedings* of the Society. Available single numbers of the current volume of the JOURNAL will be supplied at \$3.50 per copy; other available back numbers at \$4.50 per copy.

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.

Subscriptions, orders for back numbers, correspondence with reference to the JOURNAL, manuscripts, and books for review should be sent to the Secretary of the Board of Editors, 2223 Massachusetts Avenue, N.W., Washington, D. C. 20008.

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 61

CONTENTS

1967

[No. 1, January, 1967, pp. 1-476; No. 2, April, 1967, pp. 477-660; No. 3, July, 1967, pp. 661-894; No. 4, October, 1967, pp. 895-1162]

	PAGE
THE LAWFULNESS OF MILITARY ASSISTANCE TO THE REPUBLIC OF VIET-NAM. <i>John Norton Moore</i>	1
THE NORMALIZATION OF RELATIONS BETWEEN JAPAN AND THE REPUBLIC OF KOREA. <i>Shigeru Oda</i>	35
THE MERGER OF THE INSTITUTIONS OF THE EUROPEAN COMMUNITIES. <i>Gordon L. Weil</i>	57
LEGAL ASPECTS OF THE FRENCH NUCLEAR TESTS. <i>Anthony A. D'Amato</i>	66
NEW APPROACHES TO THE STUDY OF INTERNATIONAL LAW. <i>Richard A. Falk</i>	477
THE UNITED STATES-ITALY AIR TRANSPORT ARBITRATION. <i>Paul B. Larsen</i>	496 —
SUCCESSION TO BILATERAL TREATIES BY SECEDING STATES. <i>Kenneth J. Keith</i>	521
THE SOVEREIGNTY OF LIECHTENSTEIN. <i>Walter S. G. Kohn</i>	547
A NEW LOOK AT THE JURISDICTION IN <i>ALCOA</i> . <i>John M. Raymond</i>	558
WITHDRAWAL FROM THE UNITED NATIONS: THE INDONESIAN INTERMEZZO. <i>Egon Schwelb</i>	661
THE PROPOSED INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS. <i>J. E. Carros and A. G. Roche</i>	673
PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES. <i>Piet-Hein Houben</i>	703
THE PRACTICE OF VOLUNTARY ABSTENTIONS BY PERMANENT MEMBERS OF THE SECURITY COUNCIL UNDER ARTICLE 27, PARAGRAPH 3, OF THE CHARTER OF THE UNITED NATIONS. <i>Constantin A. Stavropoulos</i>	737
TREATIES AND CHANGED CIRCUMSTANCES (<i>REBUS SIC STANTIBUS</i>). <i>Oliver J. Lissitzyn</i>	895
THE DEPOSITORY OF INTERNATIONAL TREATIES. <i>Shabtai Rosenne</i>	923
SOME ASPECTS OF INTERNATIONAL <i>JUS COGENS</i> AS FORMULATED BY THE INTERNATIONAL LAW COMMISSION. <i>Egon Schwelb</i>	946
PROCEDURES FOR ESTABLISHING THE INVALIDITY OR TERMINATION OF TREATIES UNDER THE INTERNATIONAL LAW COMMISSION'S 1966 DRAFT ARTICLES ON THE LAW OF TREATIES. <i>Herbert W. Briggs</i>	976
EDITORIAL COMMENT:	
Post-Disarmament International Law. <i>John N. Hazard</i>	78
When is There a Threat to the Peace?—Rhodesia. <i>C. G. Fenwick</i>	753
"Law of Treaties" Issue of the JOURNAL. <i>Wm. W. Bishop, Jr.</i>	990
The International Law Commission's Draft Articles upon Interpretation: Textuality <i>Redivivus</i> . <i>Myres S. McDougal</i>	992
The Termination and Suspension of Treaties. <i>Quincy Wright</i>	1000
Treaties and International Legislation. <i>Pitman B. Potter</i>	1005
Treaty Interpretation and the United States-Italy Air Transport Arbitration. <i>Stanley D. Metzger</i>	1007 —
A Decade of Legal Consultation: Asian-African Collaboration. <i>Robert R. Wilson</i>	1011
The "Effects" Doctrine of Jurisdiction. <i>Stanley D. Metzger</i>	1015
DEVELOPMENTS IN THE LAW AND INSTITUTIONS OF INTERNATIONAL ECONOMIC RELATIONS. UNCTAD. <i>Stanley D. Metzger</i>	756
NOTES AND COMMENTS:	
61st Annual Meeting of the Society. <i>E. H. F.</i>	84
Resignation of Executive Director of the Society. <i>E. H. F.</i>	86
Electronic Data-Processing and International Law Documentation. <i>Richard W. Edwards, Jr.</i>	87
Colloquium on Central and Latin American Regional Organizations, Ditchley Park, July 1-3, 1966. <i>Roy S. Lee</i>	93
Asian Institute of International Studies. <i>Eleanor H. Finch</i>	95
Conference of Asian International Law Scholars. <i>E.H.F.</i>	97
World Conference on World Peace Through Law, 1967. <i>E.H.F.</i>	97
The Society's Southern California Regional Meeting, 1966. <i>L.F.E. Goldie</i>	98
Law and Developing Countries (Continued). <i>James N. Hyde</i>	571
Hague Academy of International Law—1967 Sessions. <i>Eleanor H. Finch</i> ..	578
Law of the Sea Institute. <i>E.H.F.</i>	579
Journal of World Trade Law. <i>Eleanor H. Finch</i>	579
The Society's New Executive Director. <i>Eleanor H. Finch</i>	581
Sixty-First Annual Meeting of the Society, April 27-29, 1967	532

	PAGE
Law and Politics in the Vietnamese War: A Comment. <i>Wolfgang Friedmann</i>	776
International Commodity Controls—Some Lessons from the Coffee Agreement. <i>Andreas F. Lowenfeld</i>	785
Latin American Integration and the Constitutional Problem. <i>Georges D. Landau</i>	790
Topics for Comparative Law Congress. <i>W. W. B.</i>	790
Institute of Aerospace Law. <i>E.H.F.</i>	791
Sixty-First Annual Meeting of the American Society of International Law. <i>Eleanor H. Finch</i>	791
United States Ratification of the Hague Convention on Service of Documents Abroad. <i>Philip W. Amram</i>	1019
Capacity of States of the Union to Conclude International Agreements. <i>Raymond S. Rodgers</i>	1021
Inter-American Commercial Arbitration. <i>Charles E. Norberg</i>	1028
Report of the Meeting of the Panel on Capital Formation. <i>Robert L. Knauss</i>	1030
Law and Politics in the Vietnamese War. <i>John Norton Moore</i>	1039
The Society's Regional Meeting on South West Africa at University of California at Los Angeles. <i>Leslie Rothenberg</i>	1053
Regional Meeting of the Society at Greenville, North Carolina. <i>John M. Howell</i>	1057
The Grotian Society. <i>C. H. Alexandrowicz</i>	1058
Asian Institute of International Studies. <i>Vicente Abad Santos</i>	1059
Young Lawyers' International Association. <i>E.H.F.</i>	1060
U. S. CONTEMPORARY PRACTICE RELATING TO INTERNATIONAL LAW	101, 585, 796
JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW. <i>John E. Stevenson and Alona E. Evans</i>	116, 601, 808, 1061
BOOK REVIEWS AND NOTES. <i>Leo Gross and John H. Spencer</i>	213, 618, 825, 1081
BOOKS RECEIVED	244, 641, 858, 1119
OFFICIAL DOCUMENTS:	
UNITED NATIONS. Reports of the International Law Commission on the Second Part of Its Seventeenth Session, <i>January 3-23, 1966</i> , and on Its Eighteenth Session, <i>May 4-July 19, 1966</i>	248
INTERNATIONAL LEGAL MATERIALS. Contents, Vol. V, No. 6 (1966); Vol. VI, Nos. 1-4 (1967)	473, 891, 1161
TREATY ON PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, INCLUDING THE MOON AND OTHER CELESTIAL BODIES. <i>Washington, London and Moscow, January 27, 1967</i>	644
SOUTH WEST AFRICA. U. N. General Assembly Resolution 2145 (XXI), <i>October 27, 1966</i>	649
SOUTHERN RHODESIA:	
U. N. General Assembly Resolution 2151 (XXI), <i>November 17, 1966</i>	652
U. N. Security Council Resolution 232 (1966), <i>December 16, 1966</i>	654
INTERNATIONAL CONFERENCE OF PLENIPOTENTIARIES ON THE LAW OF TREATIES. U. N. General Assembly Resolution 2166 (XXI), <i>December 5, 1966</i>	656
UNITED STATES. Act to Establish a Contiguous Fishery Zone beyond the Territorial Sea of the United States. <i>October 14, 1966</i>	658
EUROPEAN CONVENTION ON HUMAN RIGHTS. Protocol No. 5. <i>Strasbourg, January 20, 1966</i>	658
UNITED NATIONS:	
International Covenant on Economic, Social and Cultural Rights. <i>New York, December 16, 1966</i>	861
International Covenant on Civil and Political Rights. <i>New York, December 16, 1966</i>	870
Optional Protocol. <i>New York, December 16, 1966</i>	887
UNITED STATES. Comments by Government on Parts I, II and III of the Draft Articles on the Law of Treaties Drawn Up by the International Law Commission at its 14th, 15th and 16th Sessions	1123
INDEX	1163

CONTENTS

	PAGE
THE LAWFULNESS OF MILITARY ASSISTANCE TO THE REPUBLIC OF VIET-NAM. <i>John Norton Moore</i>	1
THE NORMALIZATION OF RELATIONS BETWEEN JAPAN AND THE REPUBLIC OF KOREA. <i>Shigeru Oda</i>	35
THE MERGER OF THE INSTITUTIONS OF THE EUROPEAN COMMUNITIES. <i>Gordon L. Weil</i>	57
LEGAL ASPECTS OF THE FRENCH NUCLEAR TESTS. <i>Anthony A. D'Amato</i>	66
EDITORIAL COMMENT:	
Post-Disarmament International Law. <i>John N. Hazard</i>	78
NOTES AND COMMENTS:	
61st Annual Meeting of the Society. <i>E.H.F.</i>	84
Resignation of Executive Director of the Society. <i>E.H.F.</i>	86
Electronic Data-Processing and International Law Documentation. <i>Richard W. Edwards, Jr.</i>	87
Colloquium on Central and Latin American Regional Organizations, Ditchley Park, July 1-3, 1966. <i>Roy S. Lee</i>	93
Asian Institute of International Studies. <i>Eleanor H. Finch</i>	95
Conference of Asian International Law Scholars. <i>E.H.F.</i>	97
World Conference on World Peace Through Law, 1967. <i>E.H.F.</i>	97
The Society's Southern California Regional Meeting, 1966. <i>L. F. E. Goldie</i>	98
U. S. CONTEMPORARY PRACTICE RELATING TO INTERNATIONAL LAW	101
JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW. <i>John R. Stevenson</i>	116
BOOK REVIEWS AND NOTES. <i>Leo Gross and John H. Spencer:</i>	
American Law Institute, <i>Foreign Relations Law of the United States, Second Restatement</i> , 213; <i>Sereni, Diritto Internazionale</i> , Part IV: <i>Conflitti Internazionali</i> , 216; <i>Cambridge Essays in International Law in Honour of Lord McNair</i> , 218; <i>Académie de Droit International, Recueil des Cours, 1962</i> , 223; <i>Lissitzyn, International Law Today and Tomorrow</i> , 225; <i>Lillich, The Protection of Foreign Investment</i> , 226; <i>Cheshire, Private International Law</i> , 228; <i>Minasian, Pravo Mirnogo Sosushchestvovaniia</i> , 230; <i>Canadian Yearbook of International Law, 1965</i> , 233; <i>de Vries and Rodríguez-Novás, The Law of the Americas</i> , 235; <i>Dutoit, Coexistence et Droit International à la Lumière de la Doctrine Soviétique</i> , 236; <i>Kelsen, Principles of International Law</i> , 238.	
Briefer Notices: <i>Blum</i> , 239; <i>Shihata</i> , 240; <i>White</i> , 240; <i>Wybo</i> , 241; <i>Wagner</i> , 242; <i>Grzybowski</i> , 242; <i>Puget</i> , 243; <i>Meyer</i> , 244.	
Books Received	244
OFFICIAL DOCUMENTS	
UNITED NATIONS. Reports of the International Law Commission on the Second Part of Its Seventeenth Session, <i>January 3-23, 1966</i> , and on Its Eighteenth Session, <i>May 4-July 19, 1966</i>	248
INTERNATIONAL LEGAL MATERIALS. Contents, Vol. V, No. 6 (<i>November</i>), 1966; Vol. VI, No. 1 (<i>January</i>), 1967	473

BOARD OF EDITORS

Editor-in-Chief

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

RICHARD R. BAXTER
Harvard Law School

HARDY C. DILLARD
University of Virginia Law School

ALONA E. EVANS
Wellesley College

RICHARD A. FALK
Princeton University

ALWYN V. FREEMAN
Detroit, Michigan

LEO GROSS
Fletcher School of Law and Diplomacy

JOHN N. HAZARD
Columbia University

JAMES NEVINS HYDE
New York, N. Y.

OLIVER J. LISSITZYN
Columbia University

BRUNSON MACCHESNEY
Northwestern University Law School

MYRES S. McDOUGAL
Yale Law School

H. C. L. MERILLAT
Washington, D. C.

STANLEY D. METZGER
Georgetown University Law Center

COVEY OLIVER
University of Pennsylvania

STEFAN A. RIESENFELD
University of California Law School

OSCAR SCHACHTER
New York, N. Y.

LOUIS B. SOHN
Harvard Law School

ERIC STEIN
University of Michigan Law School

JOHN R. STEVENSON
New York, N. Y.

RICHARD YOUNG
Van Hornesville, N. Y.

Honorary Editors

HERBERT W. BRIGGS
Cornell University

CHARLES G. FENWICK
Washington, D. C.

HANS KELSEN
University of California

JOSEF L. KUNZ
University of Toledo

PITMAN B. POTTER
American University

JOHN B. WHITTON
Princeton University

ROBERT R. WILSON
Duke University

QUINCY WRIGHT
University of Virginia

Secretary of the Board of Editors

ELEANOR H. FINCH

The object of The American Society of International Law is to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice. For this purpose it co-operates with similar societies in this and other countries.

Membership in the Society is open to all persons of good moral character interested in the objectives of the Society. Membership dues are: Regular, \$15.00 for residents of the United States, \$10.00 for non-residents; professional, \$25.00; intermediate, \$10.00; student, \$5.00. Application forms and further information may be obtained from the Membership Secretary of the Society at the address given below.

The JOURNAL is published quarterly and is supplied to all members of The American Society of International Law without extra charge. The annual subscription to non-members of the Society is \$15.00 and includes subscription to the *Proceedings* of the Society. Available single numbers of the current volume of the JOURNAL will be supplied at \$3.50 per copy; other available back numbers at \$4.50 per copy.

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.

Subscriptions, orders for back numbers, correspondence with reference to the JOURNAL, manuscripts, and books for review should be sent to the Secretary of the Board of Editors, 2223 Massachusetts Avenue, N.W., Washington, D. C. 20008.