100 ASIL 1906 – 2006

INTERNATIONAL LEGAL MATERIALS

FEATURING:

1

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, Introductory Note by Evan T. Bloom

Annex VI relates to liability for damage arising from activities for which advance notice is required under Article VII (5) of the Antarctic Treaty. An operator organizing activities in the Antarctic Treaty area will be liable for the costs of the response action, if it fails to take prompt and effective action.

77

Court of First Instance of the European Communities: Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities, Introductory Note by August Reinisch

The Court of First Instance dismissed the action aimed at annulment of EC regulations implementing UN Security Council resolutions relating to the freezing of assets of individuals suspected of involvement in terrorist activities. The Court noted that the primacy of obligations under the UN Charter encompassed decisions of the UN Security Council and therefore examined the alleged violation of the applicant's rights by a standard of jus cogens.

202

Supreme Court of Israel: Mara'be v. The Prime Minister of Israel

The Supreme Court of Israel found that the military commander had the authority to erect the barrier around Alfei Menashe, since its erection was motivated by a "security consideration", and not by political reasons. The petitioners' request that the barrier be built on the Green Line was rejected due to security-military considerations. However, the Court determined that "the details of an alternative route" had not been examined "in order to ensure security with a lesser injury to the residents of the village." For this reason, the Court ordered the respondent to reconsider the existing route.

246

United Kingdom Supreme Court of Judicature Court of Appeal (Civil Division): Occidental Exploration and Production Company v. Republic of Ecuador, Introductory Note by Devashish Krishan

The Court held that the English doctrine of non-justiciability does not bar actions before it in which the arbitration jurisdiction is challenged. English courts are competent to set aside awards rendered in the territory of England pursuant to arbitration under a bilateral investment treaty and conducted pursuant to UNCITRAL arbitration rules.

Volume 45 • January 2006 • The American Society of International Law

https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

AUTHORITATIVE RELEVANT RESEARCH

Introducing a NEW Landmark Review Series

Annual Review of Law and Social Science™

Volume 1, December 2005—Available Online and in Print

Editor: John Hagan, *Northwestern University*

Associate Editors: Kim Lane Scheppele, *Princeton University*
Tom R. Tyler, *New York University*

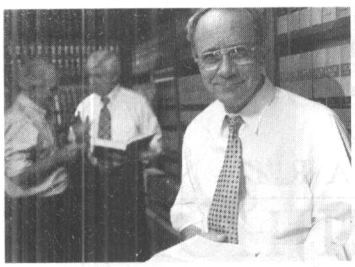
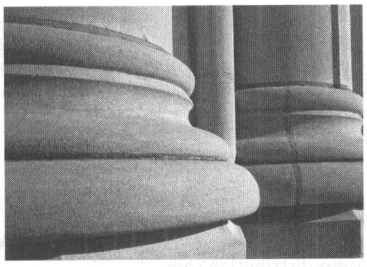
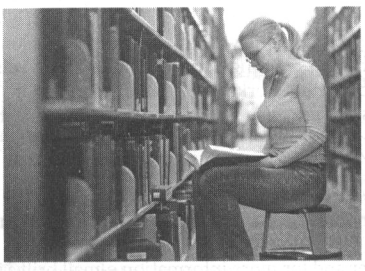
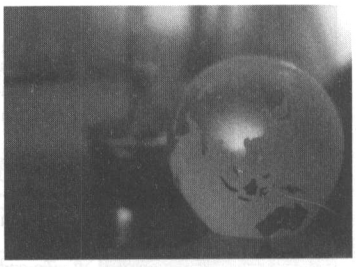
The ***Annual Review of Law and Social Science,*** published in December 2005, strives to enhance the understanding of the complex connections between law, culture, and society by focusing on social scientific studies of law and law-like systems of rules, institutions, processes, and behaviors. This groundbreaking series provides multidisciplinary insights into the impact of law, aggregated human behavior and interactions, analytic and normative jurisprudence, the dynamics of decision making and enforcement of authoritative rules, as well as the variations and changes in legal institutions and the management of social change by these institutions.

Volume 1 specifically addresses criminal disenfranchisement, comparative study of criminal punishment, transnational human rights, economic theories of settlement bargaining, the death penalty, law, race, and education in the United States, law and corporate governance, and more.

The ***Annual Review of Law and Social Science*** is the ideal resource for legal scholars, sociologists, political scientists, and criminologists, as well as those involved in criminal justice or social welfare departments, penal systems, judicial review, or public policy.

Access This Series Online NOW at www.annualreviews.org/go/ilm

Annual Review of Law and Social Science
Volume 1 | December 2005 | ISSN: 1550-3585 | ISBN: 0-8243-4101-5
Regular Individual Price (US/Int'l): $76/$81 | Handling and applicable sales tax additional.
Contact Annual Reviews for institutional pricing and site license options.

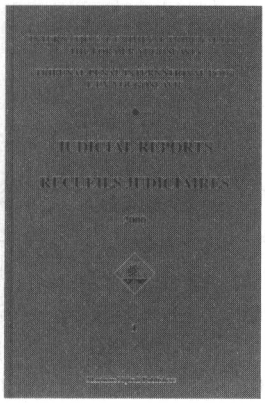





Annual Reviews
A Nonprofit Scientific Publisher
Call toll free (US/CAN): 800.523.8635 | Call worldwide: 650.493.4400
Fax: 650.424.0910 | Email: service@annualreviews.org | Online at www.annualreviews.org
https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

Judicial Reports / Recueils judiciaires

2000 (Volumes I and II)

International Criminal Tribunal for the Former Yugoslavia /
Tribunal Pénal International pour l'ex-Yougoslavie



- In print 2005
- ISBN 90 04 14357 2
- Hardback (2 vols.,lxix, 2892 pp.)
- List price EUR 650.- / US$ 930.-
- Judicial Reports / Recueils judiciaires, 4

The Judicial Reports/Recueils judiciaires of the International Criminal Tribunal for the former Yugoslavia (ICTY) comprise (in English and French) all Judgments by both Trial Chambers and the Appeals Chamber as well as their most significant Decisions and Orders issued in a given year.
The publication is aimed at giving lawyers, scholars, students and the general public convenient access to the historic work of the ICTY, which was established pursuant to United Nations Security Council Resolution 827 in 1993 to try individuals accused of serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.
The Judicial Reports are organized chronologically by case. Within each case, one will find the selected materials, including separate and/or dissenting opinions that may accompany a given Trial Chamber or Appeals Chamber ruling.The Judicial Reports will contribute to a greater knowledge of the judicial activities of the ICTY. Various annexes, such as various tables of cases and a table of references will facilitate the use of these volumes.

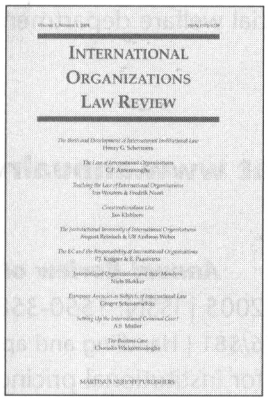
Judicial Reports 1998 and 1999 are still forthcoming.

Available through the United Nations, UN Sales No. E/F.05.III.P.1

International Organizations Law Review

Volume 3, 2006

Editors-in-Chief: Niels M. Blokker and Ramses A. Wessel



2006: Volume 3 (in 2 issues)
ISSN 1572-3739 / E-ISSN 1572-3747
Institutional subscription rates
- print + e: EUR 199.- / US$ 249.-
- e-only: EUR 179.- / US$ 224.-

Individual subscription rates
- print only: EUR 66.- / US$ 82.-

After the Second World War in particular, the law of international organizations developed as a discipline within public international law. Separate, but not separable. The International Organizations Law Review purports to function as a discussion forum for academics and practitioners active in the field of the law of international organizations. It is based on two pillars; one is based in the world of scholarship, the other in the world of practice. In the first dimension, the Journal focuses on general developments in international institutional law. Its main interest lies in general, theoretical, issues rather than in the law of specific organizations. Contributions may deal with individual organizations, but the relevance of the subject to other international organizations or to the discipline of the law of international organizations must be clear. Most contributions will therefore focus on institutional rather than on substantive issues.qually important, however, are the views from practice. The world of scholars and the world of practitioners largely function in separate settings. One is not always fully aware of developments taking place in the other. The Review aims to bridge this separation by creating a forum to identify and discuss legal developments within international organizations as observed by practitioners working for those organizations next to theoretical analyses of international institutional law. Both dimensions are to support and stimulate each other.

For our Conditions of Sales please see www.brill.nl

To order and for more information e-mail brill@turpin-distribution.com or cs@brillusa.com (for customers in North America).

BRILL

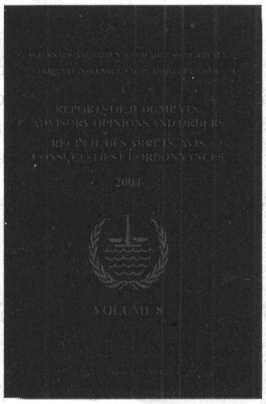
MARTINUS NIJHOFF PUBLISHERS

https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Reports of Judgments, Advisory Opinions and Orders / Recueil des arrêts, avis consultatifs et ordonnances *(2004)*

International Tribunal for the Law of the Sea



- In print 2005
- ISBN 90 04 14859 0
- Hardback (vi, 174 pp.)
- List price EUR 125.- / US$ 169.-
- Reports of Judgments, Advisory Opinions and Orders / Recueil des arrêts, avis consultatifs et ordonnances, 8

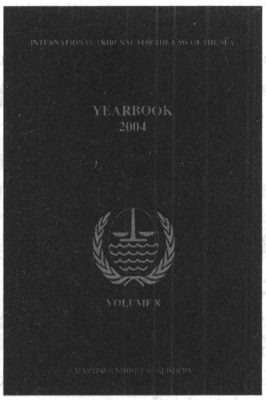
The International Tribunal for the Law of the Sea is an independent judicial body established by the United Nations Convention on the Law of the Sea to adjudicate disputes arising out of the interpretation and application of the Convention.
The Tribunal is open to States Parties to the Convention and, in certain cases, to entities other than States Parties (such as international organizations and natural or legal persons).
The jurisdiction of the Tribunal comprises all disputes submitted to it in accordance with the Convention. It also extends to all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.
This volume contains the Judgments and Orders delivered by the Tribunal in the year 2004 in English and French.

Le Tribunal international du droit de la mer est un organe judiciaire indépendant créé par la Convention des Nations Unies sur le droit de la mer pour connaître des différends relatifs à l'interprétation et l'application de la Convention.

Le Tribunal est ouvert aux Etats Parties à la Convention et, dans certains cas, à des entités autres que les Etats Parties (telles que des organisations internationales et des personnes physiques et morales). La compétence du Tribunal s'étend à tous les différends qui lui sont soumis conformément à la Convention. Elle s'étend également à toutes les matières prévues de manière spécifique dans tout autre accord qui confère compétence au Tribunal. Le présent volume contient le texte en français et en anglais des arrêts et ordonnances rendus par le Tribunal au cours de l'année 2004.

Yearbook International Tribunal for the Law of the Sea *(2004)*

International Tribunal for the Law of the Sea



- In print 2005
- ISBN 90 04 14959 7
- Paperback (xvi, 228 pp.)
- List price EUR 90.- / US$ 122.-
- Yearbook International Tribunal for the Law of the Sea, 8

The International Tribunal for the Law of the Sea is an independent judicial body established by the *United Nations Convention on the Law of the Sea* to adjudicate disputes arising out of the interpretation and application of the Convention. The Tribunal is open to States Parties to the Convention. It is also open to entities other than States Parties (States and international organizations non-parties to the Convention and natural or juridical persons) in cases provided for in the Convention or other agreements conferring jurisdiction on the Tribunal.

The Yearbook will give lawyers, scholars, students as well as the general public easy access to information about the jurisdiction, procedure and organization of the Tribunal and also about its composition and activities in 2004. The Yearbook is prepared by the Registry of the Tribunal and is also available in French (Annuaire 2004).

For our Conditions of Sales please see www.brill.nl

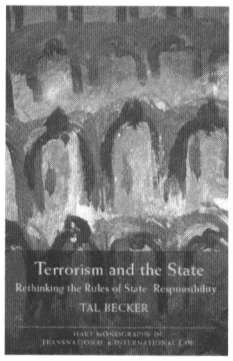
To order and for more information e-mail brill@turpin-distribution.com or cs@brillusa.com (for customers in North America).

BRILL

MARTINUS NIJHOFF PUBLISHERS

https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

New Titles from Hart Publishing



Terrorism and the State

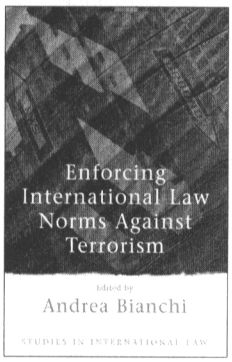
Rethinking the Rules of State Responsibility

Tal Becker

The alarming rise in international terrorist activity since the attacks of September 11th has generated intense debate about the principles by which State responsibility for private acts of terrorism is determined in international law. This book analyzes the legal principles that govern State responsibility for the conduct of non-State actors and examines their relevance and effectiveness in an increasingly interconnected world. Drawing on a wide array of precedents and legal sources, the study offers a novel approach to regulating State responsibility for private violence that is grounded in principles of causation. The book argues that causation-based State responsibility for terrorism can be reconciled with the International Law Commission's Draft Articles on State Responsibility and offers a conceptual and legal framework that is better equipped to deal with the subtle interactions between State and non-State actors that make contemporary terrorism possible.

Mar 06 Hbk 1-84113-606-9 $70 Pbk 1-84113-627-1 $40

Hart Monographs in Transnational and International Law Vol No: 1



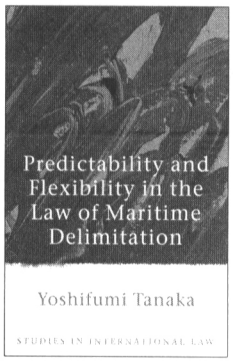
Enforcing International Law Norms Against Terrorism

Edited by Andrea Bianchi

The scale and horror of recent terror attacks and the panic which ensued throughout the world has forced policy-makers and international lawyers to re-examine international legal tools available to enforce norms against terrorism. This book analyses the suitability of existing international legal tools to enforce rules prohibiting terrorism. Contributions from leading experts in international law examine, among others, questions relating to the proper role of international law in combating terrorism, the legality of covert operations against terrorism, and how to regulate the internet to prevent terrorist usage. In addition, the ways in which States can co-operate together to more effectively investigate terrorist infrastructures and apprehend suspects is focused upon.

New in Pbk 1-84113-566-6 Nov 05 $60

Studies in International Law Vol No: 4



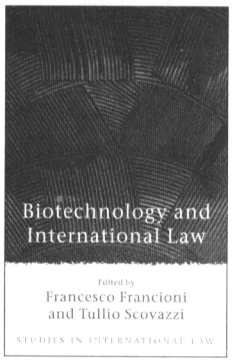
Predictability and Flexibility in the Law of Maritime Delimitation

Yoshifumi Tanaka

The principal aim of this book is the quest for a well-balanced legal system that reconciles predictability and flexibility in the law of maritime delimitation. As with all types of law, the law of maritime delimitation should possess a degree of predictability. On the other hand, as maritime delimitation cases differ, flexible considerations of geographical and non-geographical factors is also required in order to achieve equitable results. How, then, is it possible to ensure predictability while taking into account a diversity of factors in order to achieve an equitable result? This, according to the author, is the question at the heart of the law of maritime delimitation. The book addresses this issue by looking at three aspects of the question: first by looking at the two opposing and contrasting approaches evident in the evolution of the law of maritime delimitation; second, by undertaking a comparative study of the case-law and State practice; and third, by examining the theoretical problems underlying that case law.

Hbk 1-84113-581-X June 06 $150

Studies in International Law Vol No: 8



Biotechnology and International Law

Edited by Francesco Francioni and Tullio Scovazzi

As with any rapid technological development, the biotechnology revolution is putting great strains on the ability of law to adapt to new challenges and threats. Although there is general agreement on the need to regulate biotechnology in many different fields of human activity (agriculture, life sciences, forensic science) domestic law remains deeply divided over the best approach to take. This book is the first attempt at covering the most pressing legal issues raised by the impact of biotechnologies on different categories of international norms. The overall objective of the book is to provide an up-to-date picture of international law as it stands today and to stimulate critical reflection and further research on the solutions that will be required in years to come.

Hbk 1-84113-631-X April 06 $100

Studies in International Law Vol No: 9

Hart Publishing, Oxford, UK and Portland, Oregon, US
ISBS, 920 NE 58th Ave, Suite 300, Portland, OR, 97213-3786, USA
Tei +1 503 287 3093 **Fax** +1 503 280 8832 orders@isbs.com
Order Online: www.hartpublishingusa.com **Website for customers outside the US:** www.hartpub.co.uk



https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

HeinOnline

The world's largest image-based legal research collection! Now in thousands of locations in more than 150 countries!

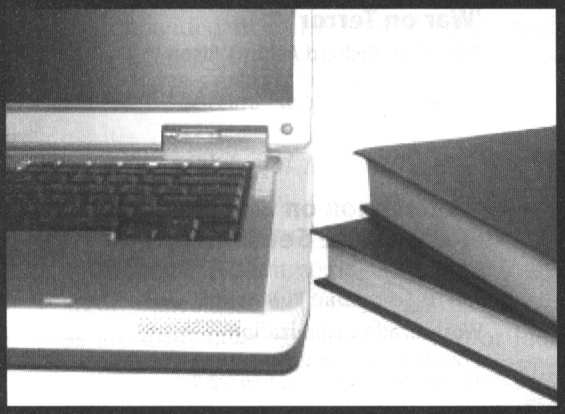


IMAGE-BASED
COMPREHENSIVE
FULLY-SEARCHABLE

Now containing more than 330 journals classified as Non-U.S. and International!

LAW JOURNAL LIBRARY
More than ***1100*** legal periodicals now participating

TREATIES AND AGREEMENTS LIBRARY
The world's most comprehensive, full-text coverage of every U.S. treaty, whether in force, expired, or yet-to-be officially published

SUPREME COURT LIBRARY
Includes all official U.S. Reports volumes, preliminary prints, and slip opinions since inception in 1790

FEDERAL REGISTER LIBRARY
Includes coverage from inception in 1936 through August 2005; all rules, proposed rules, notices of federal agencies and organizations, and executive orders

LEGAL CLASSICS LIBRARY
Hundreds of monographs written by some of the best legal minds in history

COMING SOON:

U.S. LEGISLATIVE HISTORIES LIBRARY
Complete legislative histories not found in any other online resource

U.S. FEDERAL AGENCY LIBRARY
Will contain *Administrative Decisions, FCC Record, Tax Court Reports,* and a number of other notable U.S. Federal Agency publications

PHILIP C. JESSUP RESEARCH LIBRARY
The indispensable compilation comprised of materials from the International Moot Court Competition, plus the *ILSA Journal of International & Comparative Law* and *ILSA Journal of International Law*

PRESIDENTIAL LIBRARY
Will include *Public Papers of the Presidents,* along with other important documents related to U.S. Presidents past and present

HEIN online

For more information, please visit us at

http://heinonline.org

HeinOnline is a product of William S. Hein & Co., Inc.

https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

CAMBRIDGE

FROM CAMBRIDGE UNIVERSITY PRESS

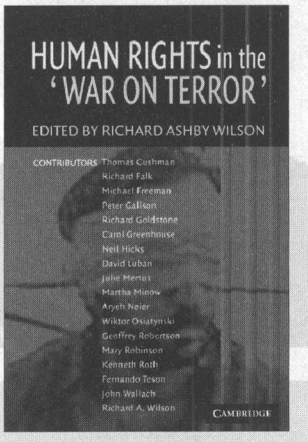
The Consolidated Asylum and Migration Acquis
The EU Directives in an Expanded Europe
Edited by Peter J. van Krieken
$65.00: Paperback: 90-6704-180-7: c.350pp

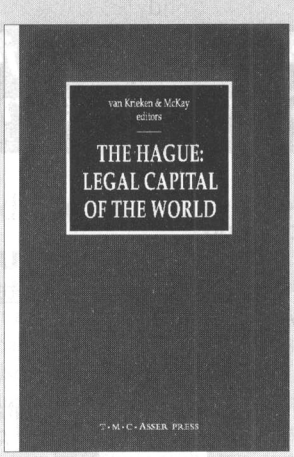
The Hague: Legal Capital of the World
Peter van Krieken and David McKay
$95.00: Hardback: 90-6704-185-8: 590pp

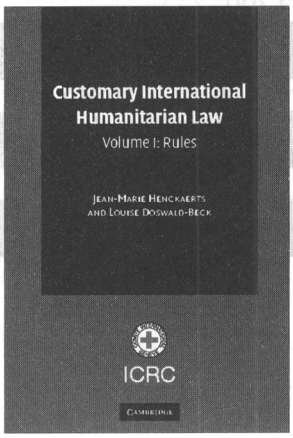
The European Community, the European Union and the International Law of Treaties
A Comparative Legal Analysis of the Community and Union's External Treaty-Making Practice
Delano Rubin Verwey
$90.00: Paperback: 90-6704-182-3: 320pp

Migration and Refugee Law
Principles and Practices in Australia
John Vrachnas, Kim Boyd, Mirko Bagaric, and Penny Dimopoulos
$95.00: Paperback: 0-521-61808-8: 362pp

Principles of International Criminal Law
Gerhard Werle, Florian Jessberger, Wulf Burchards, Volker Nerlich, and Belinda Cooper
$120.00: Hardback: 90-6704-196-3: 508pp
$58.00: Paperback: 90-6704-202-1







Human Rights in the 'War on Terror'
Edited by Richard Ashby Wilson
$70.00: Hardback: 0-521-85319-2: 368pp
$28.99: Paperback: 0-521-61833-9

A Handbook on the WTO Dispute Settlement System
A WTO Secretariat Publication
World Trade Organization
$120.00: Hardback: 0-521-84192-5: 234pp
$58.00: Paperback: 0-521-60292-0

The International Climate Change Regime
A Guide to Rules, Institutions and Procedures
Farhana Yamin and Joanna Depledge
$150.00: Hardback: 0-521-84089-9: 730pp
$75.00: Paperback: 0-521-60059-6

Crimes against Humanity
A Normative Account
Larry May
$70.00: Hardback: 0-521-84079-1: 326pp

Customary International Humanitarian Law
Vols. 1 and 2
Edited by Jean-Marie Henckaerts and Louise Doswald-Beck
$450.00: 2 Vol. Hardback Set: 0-521-53925-0: 5066pp
$90.00: Volume 1 Hardback: 0-521-80899-5: 676pp
$45.00: Volume 1 Paperback: 0-521-00528-0

Prices subject to change.

For more information, please visit us at www.cambridge.org/us/law *or call toll-free at* 1-800-872-7423

CAMBRIDGE UNIVERSITY PRESS

https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

INTERNATIONAL LEGAL MATERIALS®

Statement of Editorial Policy

International Legal Materials is a core publication of The American Society of International Law that reproduces texts of documents reflecting the broad scope and evolution of international law. The range of covered subjects has expanded from traditional topics such as international organizations, jurisdiction, maritime law and trade to include developments in fields such as electronic commerce, environmental law, human rights and war crimes jurisprudence.

International Legal Materials serves as both a bi-monthly information service and a widely recognized archive of international law documents for a diverse, global community of legal scholars, government officials, private practitioners and institutions sharing a common interest in international law. To meet the varied demands of such a readership, documents are selected from world-wide sources on the basis of their present and future legal significance. For this reason, purely political or issue-advocacy documents are usually excluded from consideration, as are draft laws not in final form or lacking a unique, lasting character.

International Legal Materials is prepared for publication in Washington, D.C. by a staff of Editors acting with both the advice of the Editorial Advisory Committee and the assistance of Corresponding Editors around the world. In order to reproduce the texts of selected documents under tight production schedules, the best available source is used, whether electronic or printed. To best ensure the quality of electronic texts, the ILM Office staff works in conjunction with official sources to correct any apparent errors.

Readers are invited to send comments to:

Ruth Teitelbaum
Managing Editor, *International Legal Materials*
The American Society of International Law
2223 Massachusetts Avenue, NW
Washington, DC 20008-2864

https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

Managing Editor

Ruth Teitelbaum

Assistant Editor

Elena Papangelopoulou

Editorial Advisory Committee

Charlotte Ku, *Chair*

Luis Angel Benavides Hernández
Evan T. Bloom
Christina M. Cerna
John R. Crook
Alejandro A. Escobar
Aaron X. Fellmeth
Mark R. Joelson
Nancy L. Perkins
Jeffrey Walker
Maurice Wolf
Bruce Zagaris
Nassib G. Ziadé

Members Emeriti
John Lawrence Hargrove

ILM Corresponding Editors

Evelina Teubal Alhadeff (Mercosur, Argentina)
David J. Attard (Malta)
Jean-Francois Bellis (European Communities)
Charles H. Brower, II (Public International Law, Arbitration)
Gian Luca Burci (International Health Law)
William E. Butler (CIS)
David JA Cairns (Investment Arbitration)
Dr. Trevor A. Carmichael, Q.C. (Commercial Arbitration)
James H. Carter (U.S. Second Circuit)
Sudhir Chopra (India)
Carl Q. Christol (Communications, Outer Space)
John P. Cogan, Jr. (U.S. Fifth Circuit)
Melaku Geboye Desta (AU, Agriculture, WTO)
Janelle Diller (International Labor Law)
John R. Dugard (Southern Africa)
Mete Erdem (International Environmental Law, Turkey)
Richard I. Fine (U.S. Ninth Circuit)
Hannah R. Garry (International Human Rights)
Dencho G. Georgiev (Bulgaria)
Moritaka Hayashi (LOS, International Fisheries Law)
Jean-Marie Henckaerts (International Humanitarian Law)
Larry D. Johnson (International Atomic Energy Agency)
Sami Kallel (Maghreb)
Kenneth Klein (International Taxation)
Karin Landgren (Children)
Arnold H. Leibowitz (Immigration)
Frankie F.L. Leung (Hong Kong)
John Linarelli (International Public Procurement)
Daryl A. Mundis (ICC, ICTR, ICTY)
Boldizsár Nagy (Hungary)
Michael O'Boyle (European Court of Human Rights)
John R. Pate (Andean Community of Nations)
T. Michael Peay (Public International Law)
Charles H. Poncet (Switzerland)
Amelia B. Porges (WTO)
Maurizio Ragazzi (World Bank)
August Reinisch (European Law)
Timothy Rudy (OAS)
Ewa Sakiewicz-Munnerlyn (Poland)
Gerald S. Schatz (Antarctica)
Richard F. Scott (International Energy Agency)
Henri Smets (International Environmental Law, OECD)
Stefaan Smis (Belgium)
Brigitte Stern (France)
Sompong Sucharitkul (Southeast Asia and the Pacific)
Jiri Toman (Law of War)
Antônio Augusto Cançado Trindade (Brazil, IACHR)
Kim Van der Borght (Belgium)
Jorge A. Vargas (Mexico)
Manuel E. Ventura-Robles (IACHR)
Thomas W. Wälde (Energy Law, International Investment)
Rebecca M.M. Wallace (United Kingdom)
Gerhard H.O. Wegen (Germany)
John Wilson (Private International Law)
Yozo Yokota (Japan)

https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press

INTERNATIONAL LEGAL MATERIALS
Volume 45 — January 2006
— Contents —

TREATIES AND AGREEMENTS

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty
Introductory Note by Evan T. Bloom 1
Text of Protocol 5

Council of Europe: Convention on Action against Trafficking in Human Beings and Its Explanatory Report
Text of Convention 12

JUDICIAL AND SIMILAR PROCEEDINGS

Court of First Instance of the European Communities: Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities
Introductory Note by August Reinisch 77
Text of Decision 81

German Federal Court of Justice: Decision of the General Federal Prosecutor: Center for Constitutional Rights et al. v. Donald Rumsfeld et al.
Introductory Note by Andreas Fischer-Lescano 115
Text of Decision 119

Higher Regional Court of Stuttgart: Center for Constitutional Rights et al. v. Rumsfeld et al.
Introductory Note by Andreas Fischer-Lescano 115
Text of Decision 122

United States Court of Appeals for the District of Columbia Circuit: Hwang Geum Joo et al. v. Japan
Text of Decision 127

European Court of Human Rights Grand Chamber: Bosphorus Hava Yollari v. Ireland
Introductory Note by Elena Papangelopoulou 133
Text of Decision 136

European Court of Human Rights Grand Chamber: Jahn and Others v. Germany
Text of Decision 172

Supreme Court of Israel: Mara'be v. The Prime Minister of Israel
Text of Decision 202

United Kingdom Supreme court of Judicature Court of Appeal (Civil Division): Occidental Exploration and Production Company v. Republic of Ecuador
Introductory Note by Devashish Krishan 246
Text of Decision 249

OTHER DOCUMENTS RECEIVED 269

https://doi.org/10.1017/S0020782900006483 Published online by Cambridge University Press