AMERICAN
SOCIETY OF
INTERNATIONAL
LAW

PROCEEDINGS
of the
76th ANNUAL MEETING

WASHINGTON, D.C. APRIL 22-24, 1982 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 © 1984 BY

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

2223 Massachusetts Avenue, N.W.

Washington, D.C. 20008

Editor's Note

It had been hoped that publication of the 1982 *Proceedings* would have taken place within a year of the Meeting; that is, by April 1983. Unfortunately, delays in receipt of several panel reports—indeed, one was never received at all—meant that the major part of the editing process had to take place during the 1982-1983 academic year, rather than during the summer of 1982, when it could have been accomplished more expeditiously.

Each year, many more people contribute to the organization and administration of the Annual Meeting than can be listed. Mark B. Feldman, Chairman of the Committee on the Annual Meeting, and his Committee deserve special recognition, both for the substance of the program and for assistance with the arrangement details. Covey T. Oliver, ASIL President, was also active in the planning. The reporters also deserve commendation; though some, as noted above, were dilatory, most were reasonably prompt and did excellent jobs of conveying the substance and flavor of the extemporaneous remarks that add so much to the Meeting and the *Proceedings*.

Mention must also be made of the editorial work of second- and third-year students at the Wake Forest University School of Law, members of the Wake Forest International Law Society, who, with spirit and energy, undertook the first round of editorial work as a project for the year:

Wake Forest University Law School Student Staff

Co-Editors

Clint Alexander Corrie

Neal William Fisher

Staff

Philip Bruce Baker
Michele Celeste Bartoli
Cordelia Allison Brown
Laura Maria Castellanos del Valle
Hamilton DeSaussure, Jr.
Frances Ruth Fischbein
Steven W. Lambert

Susan Diane Larson Christopher Emanuel Leon David Lackey Mathus Steven Paul Miner John Kings Motsinger Patrick Francis Roche Ricky Charles Silver

David Allen Youngdahl

My secretary, Pamela Bowman, is owed a special debt of thanks for her untiring efforts in retyping manuscript pages, including the one complete panel discussion for which we never received a reporter's draft, and patient hours in copying and otherwise assisting me with preparation of the *Proceedings*. Dean John D. Scarlett was supportive in this project, and thanks go to him and the law school for their part in its completion.

I would be remiss in not concluding this with a special note of appreciation to the Society's administrative staff, particularly Judith R. Hall, Administrative Director, with whom I had worked on the 1978 *Proceedings*, Seymour J. Rubin, Executive Director, and Eileen Bartscher, who carefully proofread the galleys and checked my editing.

GEORGE K. WALKER*

Editor

^{*} Professor of Law, Wake Forest University.

PROCEEDINGS OF THE SEVENTY-SIXTH ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

CHAIRMAN OF THE COMMITTEE ON THE ANNUAL MEETING Mark B. Feldman Editor of the Proceedings George K. Walker Asst. Editor: Judith R. Hall

CONTENTS

Iran/United States Claims Tribunal	
CHAIRMAN: Gerald M. Rosberg	1
Remarks by: Arthur Rovine Richard B. Lillich Lee R. Marks	1 5 9
Discussion	11
Mass Migration of Refugees-Law and Policy	
CHAIRMAN: Frank E. Loy	13
Remarks by: David A. Martin Michael H. Posner P. Michael Moussalli	13 19 21
Discussion	22
Strategic Deterrence and Nuclear War	
CHAIRMAN: James Woolsey	23
Remarks by: Richard A. Falk Eugene V. Rostow Walter B. Slocombe Adam Yarmolinsky	23 25 26 29
Discussion	30
Undocumented Workers in the United States	
CHAIRMAN: Alan K. Simpson	36
Remarks by: Alan K. Simpson David Carliner Antonia Hernandez David Hiller	36 38 41 43
Discussion	4
Joint Luncheon with the Section of International Law of the American Bar Association: The Legal Aspects of International Investment: The Canada-U.S. Experience. Address by Allan E. Gotlieb	4'
Islamic Law	
CHAIRMAN: M. Cherif Bassiouni	55
Remarks by: M. Cherif Bassiouni	55
A Survey of Islamia International Law Camal M. Padr	5.6

Contracts and Litigation in Islamic Law. Saad El-Fishawy	62
The Sources of Islamic Law. Farooq A. Hassan	65
Discussion	75
Nuclear Nonproliferation—Law and Policy	
CHAIRMAN: Carlton Stoiber	77
Remarks by: Carlton Stoiber John Glenn Richard T. Kennedy Mohamed A. Shaker	77 78 82 85
Lawry W. Herron	90
Discussion	98
Business Meeting	
Report of the Executive Director Report of the Director of Studies Remarks of the Outgoing President Elections Remarks of the Incoming President Election of the Nominating Committee Report of the Committee on the Manley O. Hudson Medal Report of the Committee on Honorary Members Annual Award of the Certificates of Merit Program of the Society	100 101 104 104 105 105 106 106
The United Nations Conference on the Law of the Sea	
CHAIRMAN: Elliot L. Richardson	107
Remarks by: Keith Brennan Cecil J. Olmstead Alan Beesley	107 110 113
Discussion	117
Antitrust Implications of Trade Law: Japan, the European Communities, and the United States	
CHAIRMAN: Sanford M. Litvack	120
Remarks by: Sanford M. Litvack John O. Haley Willy Schleider Michael D. Sandler	120 121 123 124
Discussion	127
The 75th Anniversary of the Second Hague Peace Conference	
Moderator: George K. Walker	130
Remarks by: Francis A. Boyle	130
New Rules and Institutions for the Peaceful Settlement of International Disputes. Leo Gross	131
The Law of the Sea. Francis A. Boyle	138
The Laws of War, Alfred P. Rubin	130

Summary Overview by:	•
Francis A. Boyle	144
Discussion	147
ICJ Decision in the Libya-Tunisia Continental Shelf Case	
CHAIRMAN: Mark B. Feldman	150
REMARKS BY Mark B. Feldman Sang-myon Rhee Mark B. Feldman Jonathan I. Charney Mark B. Feldman Ted L. Stein	150 150 153 154 160 161
Discussion	165
Choosing a Forum for International Commercial Arbitration	100
	100
CHAIRMAN: Robert Coulson	166
Remarks by: Robert Coulson	166
International Arbitration in Sweden. Ulf Franke	166
Arbitration. Michel Gaudet	172
Arbitration in the United States. Michael F. Hoellering	175
Arbitration in London. David St. John Sutton	178
Discussion	182
The Draft Restatement of the Foreign Relations Law of the United States (Revised)	
Chairman: Covey T. Oliver	184
Introduction: Covey T. Oliver	184
Remarks by: Louis Henkin Andreas F. Lowenfeld	186 19
COMMENTS BY: John Houck	194
Discussion	198
COMMENTS BY: Brice M. Clagett Cecil J. Olmstead Erik B. Wang Peter Trooboff	200 200 200 200
Remarks by: Detlev Vagts	203
Trade and Finance Prospects for the Developing Nations in the 1980s	
Chairwoman: Beverly May Carl	206
Trade Problems of the Developing Nations. Dale Furnish	206
Recent Developments in World Commodity Trade	
Regulation, Paul D. Reynolds	210

International Reaganomics and the IFIs. Stephen T. Zamora	215
Discussion	227
Application of Customary International Law by National Tribunals	
CHAIRMAN: Edward Gordon	231
General International Law and the Common Law: A Decade of Developments. James Crawford	232
The Application of Customary International Law Affecting Human Rights by National Tribunals. John Dugard	245
Application of Customary International Law by U.S. Domestic Tribunals. Lori Fisler Damrosch	251
COMMENTS BY: John Claydon Edward Gordon: Thoughts About a Case Law Approach to Customary International Law	255 258
Discussion	261
The Falkland/Malvinas Crisis	
CHAIRMAN: Monroe Leigh	267
Remarks by: Thomas M. Franck Victor Beaugé John Norton Moore Seymour J. Rubin	267 270 275 278
Discussion	279
Arms Control in Outer Space	
CHAIRMAN: Stephen Gorove	284
Remarks by: Stephen Gorove Edward R. Finch, Jr. Benjamin Sanders David Small Donald A. Vogt	284 286 287 289 291
Discussion	295
Open Forum	•
Presiding: Christopher C. Joyner	297
Archaeological and Historical Objects: The International Legal Implications of UNCLOS III. Anthony Clark Arend	298
International Legal Responsibility for Creating Extraterritorial Radioactive Fallout. Phillip J. Collins	298
The Relevance of the Universal Declaration to Emerging Human Rights Protection at the International and Regional Levels: The Common Standard of Mankind. W. Paul Gormley	299
Recognition of Non-State Entities: Law as an Instrument of Policy. Charles G. MacDonald	299
Annual Dinner	
Presentation of the Manley O. Hudson Medal	300

The Age of the International Lawyer. Address by The Lord Wilberforce	301
International Protection of the Independence of the Judicial Process	
Moderator: Stephen Klitzman	307
International Legal Standards Concerning the Independence of Judges and Lawyers. Robert Kogod Goldman	307
Some Patterns of Violation of the Independence of Judges and Lawyers. Juan Ernesto Méndez	316
Remarks by: Frank C. Newman	321 323
Discussion	324
Appendix: The Independence of Judges and Lawyers: U.N. Standard Setting and the Siracusa Draft Principles on the Independence of the Judiciary. Daniel O'Donnell	326
The Role of Lawyers in Preventing Nuclear War	
MODERATOR: Francis A. Boyle	332
Remarks by: Francis A. Boyle Burns H. Weston Roger Fisher	332 338 341
Discussion	345
Philip C. Jessup International Law Moot Court Competition	349
Cooperative Efforts in International Banking Regulation	
CHAIRWOMAN: Cynthia C. Lichtenstein	352
Remarks by: Cynthia C. Lichtenstein Paul L. Lee Peter Troberg Frederick R. Dahl	352 353 358 360
COMMENTS BY: Helen B. Junz	362
Discussion	363
Appendices	
Association of Student International Law Societies: The Executive Secretary's Report Officers and Committees for the Year 1982-83 Board of Review and Development Amendments to the Regulations of the Society	366 381 384 384

Proceedings of the Seventy-Sixth Annual Meeting of the American Society of International Law