

## IN MEMORIAM

### OSCAR SCHACHTER (1915–2003)

The *Proceedings* of the American Society of International Law record “Schachter, Oscar, Department of State, Washington, D.C.” on the membership rolls as early as 1943.<sup>1</sup> Just a few years out of Columbia Law School (class of 1939) and then in his twenties, he joined the Society when some of its founders were still present, thereby providing a living link from the original generation through to the turn of the twenty-first century.<sup>2</sup> From wartime jobs in the nation’s capital, he moved in 1944 to the United Nations Relief and Rehabilitation Administration and in 1946 to the fledgling United Nations, where he found his vocation as an engaged practitioner and in due course the foremost scholar of the law of international organizations. He spent three decades in UN service until the UN retirement age of sixty, when he took up a second career as a professor of international law at Columbia, where he continued to teach through spring 2003 as Hamilton Fish Professor Emeritus of International Law and Diplomacy. The emeritus designation took effect when he reached age seventy in 1985, but he never in any sense retired. He maintained a full program of professional activities until his final illness of Fall 2003.

On his bookshelves when he died in December 2003 were the continuous volumes of the *American Journal of International Law* from 1944 through 2003—sixty years, 240 issues. He was elected to the Board of Editors in 1959; his first article in AJIL appeared in the January 1960 issue.<sup>3</sup> At the end of a presentation by Schachter on a UN topic to the 1959 annual meeting, Herbert Briggs, then president of the Society and editor in chief of the *Journal*, commented:

My chief grievance with Oscar Schachter has been that we have not heard from him often enough. And we have not had enough from his pen. We took care of that this morning by electing him to the Board of Editors of the AMERICAN JOURNAL OF INTERNATIONAL LAW. He shall now have to contribute regularly to its pages.<sup>4</sup>

And so he did, for almost forty-five years. In a curriculum vitae including more than one hundred principal publications, some thirty are substantive pieces written for AJIL or published in the *ASIL Proceedings*, across the entire range of our discipline—sources of international law, use of force, human rights, state responsibility, dispute settlement, and many aspects of UN law and practice.

Schachter was president of the American Society between 1968 and 1970 and honorary president from 1994 to 1996. Almost every year across half a century (most recently in 2002), he appeared on programs at the annual meeting, either as principal lecturer or as discussant or moderator, on a staggering range of subjects. In 1997, he was the center of attention in a “living legend” interview, which merits reading in full for a glimpse not just of his remarkable career but of his inimitable sense of humor.<sup>5</sup> The 2001 annual meeting – organized around the theme “The Visible College of International Law” in homage to Schachter’s much-quoted article, *The Invisible College of International Lawyers*<sup>6</sup>—was the occasion for another scintillating public conversation.<sup>7</sup>

<sup>1</sup> 37 ASIL PROC. 179 (1943).

<sup>2</sup> John Bassett Moore and Charles Cheney Hyde, who were among the founding members of the Society, were honorary vice presidents when Schachter enrolled. *Compare* 1907 PROC. ASIL 9, 73, with 37 ASIL PROC. v (1943).

<sup>3</sup> *The Enforcement of International Judicial and Arbitral Decisions Against States*, 54 AJIL 1 (1960).

<sup>4</sup> 53 ASIL PROC. 344, 349 (1959).

<sup>5</sup> *A Conversation With Oscar Schachter*, 1997 PROC. ASIL 343 (transcript of interview by Brigitte Stern). For extracts illustrative of his wit, see text at notes 38, 45 *infra*.

<sup>6</sup> 72 NW. U. L. REV. 217 (1977).

<sup>7</sup> 2001 PROC. ASIL 18 (summary of interview conducted by Edith Brown Weiss).

From 1978 to 1984 Schachter served as co-editor in chief of the *American Journal of International Law*, together with Louis Henkin. The present editors in chief owe him an immeasurable debt not only for his generous attention to their writing from the earliest stages of their scholarship, but also for his sage advice as they took on the responsibilities of the editorial office two decades later. He continued to read manuscripts for the *Journal* through the summer of 2003.

One of his earliest articles, “Legal Aspects of the United Nations Action in the Congo,”<sup>8</sup> will not be found through the typical research method of search by author name. He requested AJIL’s permission to publish it under a name that would not identify him as a UN staff member or otherwise draw attention to the article’s authorship. (The chosen *nom de plume*, “E.M. Miller,” was the maiden name of Schachter’s first wife, Mollie, to whom he was married for almost forty-four years, from 1936 until her death in 1980.) In an archive of papers related to his UN service which he has bequeathed to Columbia Law School, we find his correspondence with AJIL editors William Bishop and Leo Gross about the article, which explains that before sending the manuscript to the *Journal* he had secured the approval of Secretary-General Dag Hammarskjöld for its publication, but that the “mounting attacks” by the Soviet group “impugn[ing] the impartiality of the Secretary-General and especially of the Americans on the staff” led Schachter

to the reluctant conclusion that I should not associate my name with the article at this time. The fact that the Secretary-General has approved it for publication would only, I am afraid, add fuel, since he is the major object of the attack.<sup>9</sup>

In other writings spanning the 1950s and 1960s, Schachter defended the Charter’s conception of an independent secretary-general at the head of an impartial secretariat, even in the face of superpower pressures. As principal drafter of Hammarskjöld’s public lecture at Oxford in May 1961 on the secretary-general as international civil servant, he further advanced the thesis of independent authority inhering in the office.<sup>10</sup>

In major writings published after he entered the academy, Schachter devoted himself to elaboration of the central substantive norm of the UN Charter—the prohibition in Article 2(4) of the use or threat of force. In canonical articles he not only explicated the content of the Charter rules in relation to the most hotly contested problems, including anticipatory self-defense and intervention in internal conflicts, but went on to an eloquent defense of why the Charter’s restraint on the use of force matters *as law*.<sup>11</sup>

Schachter distilled decades of experience and reflection into the book (based on his general course at the Hague Academy of International Law) that is and will remain a classic: *International Law in Theory and Practice*.<sup>11</sup> The book received the ASIL Certificate of Merit for preeminent contribution to creative scholarship in 1992; Schachter had already received the Society’s Manley O. Hudson gold medal in 1981, in recognition of a lifetime of distinguished scholarship.

A tribute of this sort cannot easily convey the ineffable qualities of a man who remained youthful enough to travel the subways of New York in search of adventure at age eighty-eight. Some will remember his cameo appearance as Mayor of the Munchkins (“Monists”) in a skit at the ASIL’s annual banquet in 1997, when he ad-libbed “monism, shmonism!” before leading

<sup>8</sup> E.M. Miller (pseudonym for O. Schachter), *Legal Aspects of the United Nations Action in the Congo*, 55 AJIL 1 (1961).

<sup>9</sup> Letter from Oscar Schachter to Leo Gross, Oct. 31, 1960 (on file at Columbia Law School).

<sup>10</sup> *The International Civil Servant in Law and in Fact: A Lecture Delivered to Congregation on 30 May 1961 by Dan Hammarskjöld, Secretary-General of the United Nations* (1961). On Schachter’s authorship of Hammarskjöld’s Oxford lecture (and his later views on positions expressed therein), see 91 ASIL PROC. 353 (1997).

<sup>11</sup> INTERNATIONAL LAW IN THEORY AND PRACTICE (1991).

a chorus of officers of the Society in singing “We represent the Law-of-Land [Lullaby] League.” Others will always break out in a grin whenever a citation to “Alienating Oscar?” turns up in the literature of feminism and international law, knowing that Oscar would be smiling right along.<sup>12</sup>

Those of us who adored him agree that the unforgettable “conversation with Oscar Schachter” at the 1997 Annual Meeting of the American Society captured something of his essence. His interlocutor, Brigitte Stern, asked, “What have been your main mistakes—as a lawyer, I mean?” The transcript records:

OSCAR SCHACHTER: Gosh. After that wonderful introduction . . . you call for my mistakes. Sure I made lots. . . . In 1948, . . . at the United Nations, the architects planning the future headquarters asked me how many seats they should make in the General Assembly. . . . I confidently answered the architects (after checking some textbooks) that they could safely add twenty seats to the fifty-one. It did not take long for my estimate to be mistaken and for costly renovations to be needed. A simple point, perhaps, but can lawyers confidently take the world as it is at a given moment when we know that it is in constant change? Could anyone have foreseen the breakup of colonial empires and the Soviet Union? The real problem, of course, does not involve guessing numbers but how to develop ideas and proceedings to cope with the unexpected changes that are inevitable.<sup>13</sup>

When the world changed unexpectedly on September 11, 2001, he did not claim that lawbooks had the answers, but many of us turned to him in search of wisdom.

Along with his widow, Dr. Muriel Sackler, his daughters Judith Schachter and Ellen S. Leventhal, and a large and growing family, we mourn the passing of a great man.

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<sup>12</sup> Cf. Hilary Charlesworth, *Alienating Oscar? Feminist Analysis of International Law*, in *RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW* (Dorinda G. Dallmeyer ed., 1993), at 1, 15 n.2.

<sup>13</sup> *A Conversation With Oscar Schachter*, 1997 PROC. ASIL 343, 344.

\* Co-Editor in Chief, *AJIL*. These remarks draw on the speaker's fuller tributes published at 98 *AJIL* \_\_\_\_ (2004) and \_\_\_\_ *Col. L. Rev.* \_\_\_\_ (2004).