



United States Practice in International Law

Volume 2: 2002-2004

Sean D. Murphy

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Foreword by Judge Stephen M. Schwebel

It is not unusual in the most elevated circles of international law to hear envious grumblings about the exceptional influence on the development of customary international law of the United Kingdom and the United States. It is a fact that they have had and do have extraordinary influence in the fashioning of international law. That fact flows first of all from the power that the British Empire and the United States of America have exerted internationally for more than two hundred years. Elements of that power have been the international trade that their economies have promoted and the naval might that their governments have projected. Their influence derives as well from the nature of the British and American democratic polities, based as they are on law. Still another significant factor is that the academic and scholarly contributions of British and American international lawyers to the development of international law are unsurpassed.

But still another element of the influence of these great English-speaking States on the content of customary international law is that their practice is published. For the practice of States to influence the development of international law, that practice must be known. "International custom, as evidence of a general practice accepted as law," is generated not only by the actuality of that practice but by the dissemination of the evidence. In the publication of their practice, the United States and the United Kingdom have long been in the lead.

In recent decades, other States, principally European, have followed their lead, an increasing trend devoutly to be wished and encouraged throughout the world. The processes of the progressive development and codification of international law by the United Nations (and earlier by the League of Nations) have brought to light the practice of large numbers of States on certain topics.

At the same time, the U.S. government no longer devotes the resources to publication of its practice that it once did. The great Digests of International Law edited by Moore, Hackworth, and Whiteman and their predecessors are not being sustained, nor are the richly annotated annual volumes of U.S. practice so helpfully published in years after the appearance of Whiteman's great Digest, edited with devotion by Marian Nash, being maintained. The *Department of State Bulletin* is no longer published, although annual collections of documents are being published since 2001. Thus it fell to the *American Journal of International Law* to fill the gap. That has been done with great success in the *Journal's* sections on the contemporary practice of the United States.

This is the second volume of *United States Practice in International Law* that Professor Sean Murphy has drawn from the pages of the *Journal* and amplified and embellished with a fine sense of what is important and what otherwise might be overlooked. The first volume was received with great praise. The reception of this volume will be no less positive. Professor Murphy sets out U.S. practice – and reactions to that practice – in a comprehensive and balanced way. That practice is unmatched in its volume and its reach, for no other State is as pervasive an international actor as is the United States. Whether that practice matches U.S. preachment is another question. But for that practice to be appraised, it must be made available. To that important end, Professor Murphy's renewed contribution is outstanding.

Stephen M. Schwebel
Washington, D.C.
January 2005

Acknowledgments

With international law increasingly playing an important role in U.S. law, and with the United States continuing to play a central role in the development of international law and institutions, it is impossible to capture in a single volume all U.S. practice in international law that arose during 2002–2004. Nevertheless, like its predecessor volume covering 1999–2001, this volume seeks to capture the essential trends and themes of U.S. practice during this period, providing detailed discussion of the most significant events and recording information that may be inaccessible to practitioners and scholars. In some instances, events prior to this period were recounted when necessary as background, while others at the very end of the period were omitted since they had not yet run their course. Many of the materials contained herein were collected for publication in the *American Journal of International Law*, but I have supplemented, updated, and reorganized those materials so as to provide in a single volume a comprehensive and accessible window on this period.

My thanks to Lori Damrosch, Bernie Oxman, Michael Reisman, and the late Jonathan Charney for their comments on much of this volume, and to my editors at Cambridge University Press, John Berger and Finola O'Sullivan, for their support and encouragement. I have been blessed with extraordinary research assistants at George Washington University, who all contributed greatly to this enterprise: Anna Conley, Brooke Marcus, Jered Matthyse, James Menz, and Janet Sarver. Anna Ascher and Stephen Scher earn credit for superb copy-editing. In the course of preparing these materials, I have repeatedly called upon the assistance of lawyers at the U.S. Department of State and elsewhere for hard-to-find materials and for comments and corrections on the text, for which I am very thankful. My colleagues at George Washington University Law School also have been generous in supporting this endeavor, especially Steve Charnovitz, Susan Karamanian, Michael Matheson, Peter Raven-Hansen, Dinah Shelton, Herb Somers, Andy Spanogle, Ralph Steinhardt, and Deans Roger Transgrud and Michael Young. While the many extracts of U.S. government documents obviously reflect that government's position, comments summarizing and connecting materials were prepared by myself and do not necessarily reflect the views of the U.S. government. Indeed, no aspect of this publication has been subsidized or supervised by the U.S. government. Any errors, of course, are mine.

This book is dedicated to the memory of Oscar Schachter, a pioneer in the field of international law and an inspiration to those who follow him.

Sean D. Murphy
Washington, D.C.
December 2004

Table of Periodical Abbreviations

AJIL	American Journal of International Law
AM. U. INT'L L. REV.	American University International Law Review
AM. U. J. INT'L L. & POL'Y	American University Journal of International Law and Policy
Amnesty Int'l Doc.	Amnesty International Document
BNA Int'l Env. Rep.	Bureau of National Affairs International Environmental Reporter
BROOK. J. INT'L L.	Brooklyn Journal of International Law
C.F.R.	Code of Federal Regulations
COE Doc.	Council of Europe Document
CONG. REC.	Congressional Record
Consol. T.S.	Consolidated Treaty Series
CRS	Congressional Research Service
Ct. Int'l Trade	Court of International Trade
Dall.	Dallas Series 1790-1800
DC CODE ANN.	DC Code Annotated
DEPT ST. BULL.	United States Department of State Bulletin
Europ. T.S. No.	European Treaty Series
Eur. Parl. Assemb.	European Parliament Assembly
F.2d	Federal Reporter 1932-1992
F.3d	Federal Reporter 1993-present
F.R.D.	Federal Rules Decisions
F.Supp.	Federal Supplement 1932-1960
F.Supp.2d	Federal Supplement 1960-present
Fed. Cir.	Federal Circuit
Fed. Reg.	Federal Register
GA Res.	United Nations General Assembly Resolution
GAO Doc.	U.S. General Accounting Office Document
GAOR Res. Supp.	General Assembly Official Records, Resolutions Supplement
H.R. Con. Res.	House of Representatives Concurrent Resolution
HARV. L. REV.	Harvard Law Review
IAEA Doc.	International Atomic Energy Agency Document
ICJ Doc. CR	International Court of Justice Document, Provisional Verbatim Record
ICJ Rep.	International Court of Justice Report
ICRC	International Committee of the Red Cross
ICTY Doc.	International Criminal Tribunal for the Former Yugoslavia Document
ILM	International Legal Materials
IMO Res.	International Maritime Organization Resolution
INT'L & COMP. L.Q.	International Law and Comparative Law Quarterly
INT'L LAW.	International Lawyer
INT'L REV. RED CROSS	International Review of the Red Cross
INT'L TRADE REP.(BNA)	International Trade Reporter, Bureau of National Affairs
Iran-U.S. Cl. Trib. Rep.	Iran-United States Claims Tribunal Reporter
J. MAR. L. & COM.	Journal of Maritime Law & Commerce
LNTS	League of Nations Treaty Series
MELB. J. INT'L L.	Melbourne Journal of International Law
MAX PLANCK Y.B.U.N.L.	Max Planck Yearbook of United Nations Law
N.Y. Rev. Books	The New York Review of Books
NEW ENG. J. MED.	New England Journal of Medicine
OECD Doc.	Organisation for Economic Co-operation and Development Document

OPCW Doc.	Organization for the Prohibition of Chemical Weapons Document
P.3d	Pacific Reporter, Third Series
POPULATION & DEV. REV.	Population and Development Review
Pres. Determination	Presidential Determination
REV. BELGE DE DROIT INT'L	Revue Belge de Droit International
S. Con. Res.	Senate Concurrent Resolution
S.Ct.	Supreme Court Reporter
S. TREATY DOC.	Senate Treaty Document
S.C.R.	Supreme Court Reports, Canada
SC Res.	United Nations Security Council Resolution
Ser.	Series
Stat.	United States Statutes at Large
TIAS	Treaties and Other International Agreements Series
TUL. J. INT'L & COMP. L.	Tulane Journal of International and Comparative Law
TUL. L. REV.	Tulane Law Review
UN Doc.	United Nations Document
UN GAOR	United Nations General Assembly Official Records
UN LAW OF THE SEA BULL.	United Nations Law of the Sea Bulletin
UNSCOR	United Nations Security Council Official Records
UNTS	United Nations Treaty Series
U.S.	United States Supreme Court Reports
U.S.C.C.A.N	U.S. Code of Congressional and Administrative News
U.S.C.	United States Code
U.S.C.A.	United States Code Annotated
U.S. Const.	United States Constitution
UST	United States Treaties and Other International Agreements
USTR	United States Trade Representative
USUN	United States Mission to the United Nations
VA. J. INT'L L.	Virginia Journal of International Law
WEEKLY COMP. PRES. DOC.	Weekly Compilation of Presidential Documents
West Supp.	West Reporter Supplement
WHA Res.	World Health Assembly Resolution
WHO Doc.	World Health Organization Document
WL	Westlaw
WTO Doc.	World Trade Organization Document
Y.B. UNCITRAL	Year Book of the United Nations Commission on International Trade Law
YALE J. INT'L L.	Yale Journal of International Law

Note on Internet citations:

All Internet citations are identified in < > brackets. All Internet addresses are accurate as of December 2004. "Ar" signals either the exact address of the document cited or signals a higher domain Internet page, which will lead the reader to the document. Undated documents are identified with "(n.d.)." Internet addresses are often unstable, such that over time the Internet addresses for the documents cited herein may change.

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