



# **United States Practice in International Law**

**Volume 1: 1999-2001**

Sean D. Murphy

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**Sean D. Murphy**

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Washington, D.C.*



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## United States Practice in International Law

### Volume I: 1999–2001

Sean D. Murphy's wide-ranging and in-depth survey of U.S. practice in international law in the period 1999–2001 draws upon the statements and actions of the executive, legislative and judicial branches of the U.S. government to examine its involvement across a range of areas. These areas include diplomatic and consular relations, jurisdiction and immunities, state responsibility and liability, international organizations, international economic law, human rights, and international criminal law. Available for the first time in one compendium, this summary of the most salient issues (including the Kosovo conflict and the attacks on the World Trade Center and the Pentagon) will be a central resource on U.S. practice in international law. The volume contains extracts from hard-to-find documents, generous citations to relevant sources, tables of cases and treaties, and a detailed index. Revealing international law in the making, this essential tool for researchers and practitioners is the first in a series of books capturing the international law practice of a global player.

SEAN D. MURPHY is Associate Professor of Law at the George Washington University. Before joining the Law School faculty in 1998, Professor Murphy served as legal counsel at the U.S. Embassy in The Hague, arguing several cases before the International Court of Justice and representing the U.S. government in matters before the International Criminal Tribunal for the Former Yugoslavia, the Permanent Court of Arbitration, and The Hague Conference on Private International Law. He also served as U.S. agent to the Iran–U.S. Claims Tribunal, arguing cases on behalf of the U.S. government and providing advice to U.S. nationals appearing before that tribunal. From 1987 to 1995, Professor Murphy was an attorney/adviser at the U.S. Department of State, handling environmental, politico-military, and claims matters. His several publications include an article on international environmental liability which won the American Journal of International Law 1994 Déak Prize for best scholarship by a younger author. In addition, his book *Humanitarian Intervention: the United Nations in an Evolving World Order* won the American Society of International Law 1997 Certificate for Preeminent Contribution to Creative Scholarship. He is a member of the Board of Editors of the *American Journal for International Law*.

## Foreword by Judge Thomas Buergenthal

International law practitioners and scholars frequently encounter difficulties in “finding” the factual elements and normative components that serve as the building blocks for the sources of international law. While treaties as an authoritative source of international law present the fewest problems, the same cannot be said of the other two sources. To determine the existence of a customary rule of international law, for example, one must locate relevant state practice, and test that practice against standards of uniformity, consistency, and the requirement of *opinio juris*. Proof of the existence of a general principle of international law typically requires identifying relevant and comparable principles applicable in the world’s major legal systems.

Yet locating such practice and principles can be extraordinarily difficult since there are no means for systematically recording how states and nonstate actors act and react over time in applying or resorting to law in their international relations. Practitioners and scholars consequently have to rely in large measure on national digests or repertoires that compile the relevant international law practice and jurisprudence of individual states. The number of these digests and repertoires is limited because they exist only for relatively few countries. Moreover, their place is increasingly being taken by practice compilations published in international law yearbooks and journals. These tend to be less complete and systematic than the traditional digests, although they are frequently more current.

The instant volume is a highly welcome contribution to the field as far as the United States practice is concerned for a variety of reasons. The last comprehensive digest dealing with that practice, prepared by Marjorie M. Whiteman, is more than thirty years out-of-date, with just occasional supplements prepared by the U.S. Department of State. Professor Murphy’s volume is fully up-to-date and systematic in its presentation. But what makes this work even more welcome and important is the breadth and depth of the coverage of this book, which is exceptional. Professor Murphy has amassed and analyzed an enormous amount of information about the legal practice and principles of the United States on matters relating to international law over the course of 1999–2001. Further, unlike certain other digests, including some earlier American ones, Professor Murphy does not limit himself to reporting official positions of the executive branch of the United States. He deals also with relevant actions of the legislative and judicial branches, often presenting not just the positions of the U.S. government, but the reactions of other states and important nonstate actors as well. Through commentary of his own, extracts from important and often hard-to-obtain documents, and copious citations to assist the reader in understanding the legal context of the reported action and in finding more information elsewhere, Professor Murphy has produced an outstanding survey of U.S. international law practice. In doing so, he has also set a new standard of scholarly quality for works of this type.

While the “trees” comprising the practice compiled in this volume are amply reported, this work is also important for the “forest” it presents. The collected practice shows a United States deeply engaged in addressing the vast number of issues confronting contemporary international law and institutions, whether it be in bilateral or multilateral relations. Here we see a United States seeking to assert its own legal policies abroad while at the same time being influenced by and forced to reassess its positions in light of the actions and reactions of other states and international organizations. What we have here is a small slice of international law in-the-making and a snapshot of the process that helps create it. One cannot read the pages of this volume without marveling at the myriad ways the United States is inescapably enmeshed in global legal affairs and in the ongoing struggle of the international community to strengthen the global rule of law. Those who believe that law plays an ever more important role in international relations will find ample support for that proposition in the pages of this volume.

Professor Murphy has produced a volume that is destined to endure. It is to be hoped that he will follow it with new volumes every few years and that scholars from other nations will undertake similar projects in relation to their own countries. Only in this way can we hope to obtain a realistic assessment of the dynamic processes that contribute to the creation of contemporary international law.

Thomas Buergenthal  
The Hauge  
December 2001

# 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 1999–2001. Nevertheless, 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 are recounted when necessary as background, while others at the very end of the period are 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 Jonathan Charney, Charlotte Ku, Michael Matheson, and Michael Reisman, who set me off on this voyage, and to my editors at Cambridge University Press, Finola O’Sullivan, Jennie Rubio, and Neil de Cort, who brought me safely into port. I have been blessed with extraordinary research assistants at George Washington University, who all contributed greatly to this enterprise: Cameron Alford, Perri al-Raheim, Anna Conley, Benjamin Gould, Matthew Haws, Uta Melzer, Shana Stanton, and Grant Willis. Anna Ascher, Meike Clincy, and Steven 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. In that regard, my thanks go out to: David Abramowitz, David Andrews, Lara Ballard, Dave Balton, Ron Bettauer, Sue Biniaz, Jami Borek, Ted Borek, Violanda Botet, David Bowker, Jo Brooks, Catherine Brown, Marshall Brown, Todd Buchwald, Hal Burman, Chris Camponovo, Ed Cummings, Mary Helen Carlson, Mark Clodfelter, Michael Coffee, Gabrielle Cowan, John Crook, Ed Cummings, Bob Dalton, Michael Dennis, Paolo Di Rosa, Idris Diaz, Jeanne Dixon, JoAnn Dolan, Josh Dorosin, Cynthia Stewart Francisco, Kenneth Gallant, Katherine Gorove, Lisa Grosh, Peter Hansen, Bob Harris, Jim Hergen, Mary Elizabeth Hoinkes, Frank Holleran, Cliff Johnson, Tom Johnson, Ken Juster, Anne Joyce, David Kaye, Jeff Kovar, Bill Kissinger, Richard Lahne, Russ LaMotte, Scott Laurer, Bart Legum, Keith Loken, Sovaida Ma’ani, Mary Catherine Malin, Geoffrey Marston, Steve Mathias, Mike Mattler, Steve McCreary, Ursula McManus, Andrea Menaker, Ted Meron, Kathleen Milton, Kathleen Murphy, Jonathan Neerman, David Newman, Judy Osborn, LeRoy Potts, Peter Pfund, Tim Ramish, Ash Roach, Eric Rosand, John Sandage, Jon Schwartz, David Stewart, Andre Surena, Peter Swire, George Taft, Will Taft, Wynne Teel, Jim Thessin, Brian Tittmore, Michael Van Alstine, Rich Visek, Maria Vullo, Allen Weiner, Kathleen Wilson, Marcia Wiss, Sam Witten, Mark Zaid and no doubt others I have inadvertently neglected to mention. My colleagues at George Washington University Law School also have been generous in supporting this endeavor, especially Raj Bhala, Susan Karamanian, Peter Raven-Hansen, Herb Somers, Louis Sohn, Andy Spanogle, Ralph Steinhardt, Roger Transgrud, and, particularly with respect to financial support, Dean 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 Anne and John Murphy, who unknowingly served as early guides in the promotion of the rule of international law.

Sean D. Murphy  
Washington, D.C.  
December 2001

# Table of Periodical Abbreviations

AJIL	<i>American Journal of International Law</i>
AFR	Africa
AM. REV. INT'L ARB.	<i>American Review of International Arbitration</i>
ARIZ. J. INT'L. & COMP. L.	<i>Arizona Journal of International and Comparative Law</i>
AUSTL. Y.B. INT'L L.	<i>Australian Yearbook of International Law</i>
BERKELEY J. INT'L L.	<i>Berkeley Journal of International Law</i>
BIA	Board of Immigration Appeals
BROOK. L. REV.	<i>Brooklyn Law Review</i>
BYIL	<i>British Yearbook of International Law</i>
C.F.R.	Code of Federal Regulations
COLUM. J. ENVTL. L.	<i>Columbia Journal of Environmental Law</i>
CONG. REC.	Congressional Record
CONN. J. INT'L L.	<i>Connecticut Journal of International Law</i>
CORNELL INT'L L.J.	<i>Cornell International Law Journal</i>
CRIM. L.F.	<i>Criminal Law Forum</i>
Ct. Int'l Trade	Court of International Trade
DICK. J. INT'L. L.	<i>Dickinson Journal of International Law</i>
ECOLOGY L.Q.	<i>Ecology Law Quarterly</i>
ENVTL. L.	<i>Environmental Law</i>
ESC Res.	United Nations Economic and Social Council Resolution
EUR. J. INT'L L.	<i>European Journal of International Law</i>
F.	<i>Federal Reporter 1880-1932</i>
F.2d	<i>Federal Reporter 1932-1992</i>
F.3d	<i>Federal Reporter 1993-present</i>
F.R.D.	<i>Federal Rules Decisions</i>
F.Supp.	<i>Federal Supplement 1932-1960</i>
F.Supp.2d	<i>Federal Supplement 1960-present</i>
Fed. Cl.	<i>Federal Claims Reporter</i>
Fed. Reg.	<i>Federal Register</i>
Fla. L. Weekly	<i>Florida Law Weekly</i>
FLA. STAT.	<i>Florida Statutes</i>
FOREIGN AFF.	<i>Foreign Affairs Magazine</i>
GA. J. INT'L & COMP. L.	<i>Georgia Journal of International and Comparative Law</i>
GA Res.	United Nations General Assembly Resolution
GATT Doc.	<i>General Agreement on Tariffs and Trade Document</i>
GEO. IMMIGR. L.J.	<i>Georgetown Immigration Law Journal</i>
GEO. L.J.	<i>Georgetown Law Journal</i>
GEO. WASH. J. INT'L L. & ECON.	<i>George Washington Journal of International Law and Economics</i>
HARV. HUM. RTS. J.	<i>Harvard Human Rights Journal</i>
HARV. INT'L L.J.	<i>Harvard International Law Journal</i>
HARV. L. REV.	<i>Harvard Law Review</i>
H.R.	House of Representatives Bill
H.R. CONF. REP.	House of Representatives Conference Report
H.R. REP.	House of Representatives Report
H.R. DOC.	House of Representatives Document
I.C.J.	International Court of Justice Reports of Judgments, Advisory Opinions and Orders
I.C.J. Doc. CR	<i>International Court of Justice Document, Provisional Verbatim Record</i>
I.C.J. Pleadings	International Court of Justice Pleadings, Oral Argument, and Documents
ICSID REV.-FOREIGN INVESTMENT L.J.	<i>ICSID Review—Foreign Investment Law Journal</i>
ICTY	International Criminal Tribunal for the former Yugoslavia
ILM	International Legal Materials
ILR	International Law Reports
INT'L & COMP. L.Q.	<i>International and Comparative Law Quarterly</i>
INT'L COM. LITIG. J.	<i>International Commercial Litigation Journal</i>
Int'l Trade Rep. (BNA)	<i>International Trade Reporter, Bureau of National Affairs</i>
Iran-U.S. Cl. Trib. Rep.	<i>Iran-United States Claims Tribunal Reports</i>
J. MAR. L. & COM.	<i>Journal of Maritime Law and Commerce</i>



JAPAN ANN. INT'L L.	Japanese Annual of International Law
LAW & POL'Y INT'L BUS.	Law and Policy in International Business Journal
LNTS	League of Nations Treaty Series
LOY. L.A. INT'L & COMP. L. REV.	Loyola of Los Angeles International and Comparative Law Review
MASS. ANN. LAWS	Annotated Laws of Massachusetts
MCGEORGE L. REV.	McGeorge Law Review
Mealey's Int'l Arb. Rep.	Mealey's International Arbitration Reporter
MICH. J. INT'L L.	Michigan Journal of International Law
OAS Doc.	Organization of American States Document
O.J.	Official Journal of the European Communities
POPULATION & DEV. REV.	Population and Development Review
PUB. PAPERS	Public Papers of the President
R.I.A.A.	Reports of International Arbitral Awards
SANTA CLARA L. REV.	Santa Clara Law Review
SC Res.	United Nations Security Council Resolution
S.Ct.	Supreme Court Reporter
S. EXEC. DOC.	Senate Executive Documents
So.2d	Southern Reporter, Second Series
Stat.	United States Statutes at Large
TIAS	Treaties and Other International Agreements Series
T.S.	Treaty Series
TUL. MAR. L.J.	Tulane Maritime Law Journal
U.C. DAVIS L. REV.	University of California at Davis Law Review
UCLA J. INT'L L. & FOREIGN AFF.	University of California at Los Angeles Journal of International Law & Foreign Affairs
U. ILL. L. REV.	University of Illinois Law Review
UMKC L. REV.	University of Missouri at Kansas City Law Review
UN Doc.	United Nations Document
UN GAOR	United Nations General Assembly Official Records
UN SCOR	United Nations Security Council Official Records
UNTS	United Nations Treaty Series
UNYB	United Nations Yearbook
U.S.	United States 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.C. app.	United States Code Appendix
U.S. CONST.	United States Constitution
U.S. DEP'T ST. DISPATCH	Department of State Dispatch
U.S.L.W.	United States Law Weekly
UST	United States Treaties and Other International Agreements
USTR	United States Trade Representative
VA. J. INT'L L.	Virginia Journal of International Law
WASH. REV. CODE	Revised Code of Washington
West Supp.	West Reporter Supplement
WL	Westlaw
WEEKLY COMP. PRES. DOC.	Weekly Compilation of Presidential Documents
WHA Res.	World Health Assembly Resolution
WHO Doc.	World Health Organization Document
WTO Doc.	World Trade Organization Document

*Note of Internet citation:*

All Internet citations are identified in < > brackets. All Internet addresses are accurate as of December 2001. "At" signals the exact address of the document cited. "Obtainable from" signals a higher domain Internet page, which will lead the reader to the document. Internet addresses are often unstable, such that over time the Internet addresses for the documents cited herein may change.

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