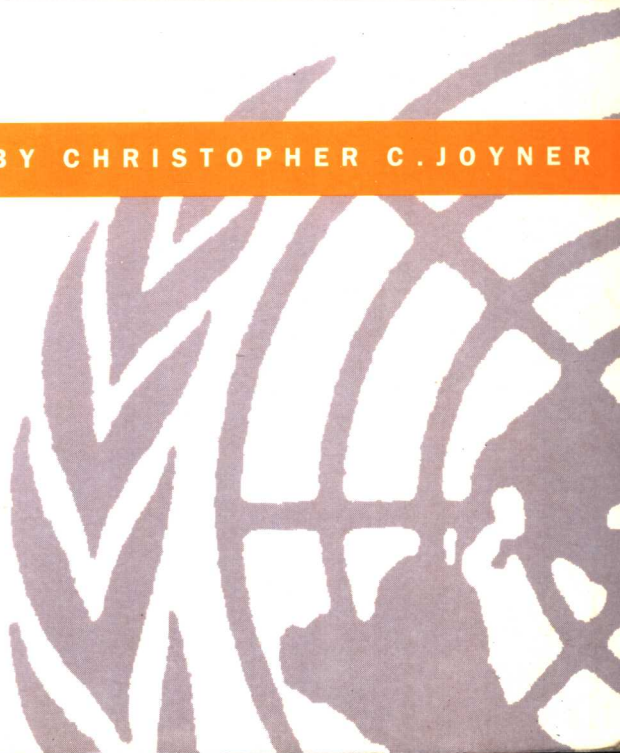


THE UNITED NATIONS AND INTERNATIONAL LAW

EDITED BY CHRISTOPHER C. JOYNER



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A co-publication with the
American Society of International Law

ASIL  THE AMERICAN
SOCIETY OF
INTERNATIONAL
LAW



CAMBRIDGE
UNIVERSITY PRESS

Published by the Press Syndicate of the University of Cambridge
The Pitt Building, Trumpington Street, Cambridge CB2 1RP
40 West 20th Street, New York, NY 10011-4211, USA
10 Stamford Road, Oakleigh, Melbourne 3166, Australia

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First published 1997

Printed in Great Britain at the University Press, Cambridge

A catalogue record for this book is available from the British Library

Library of Congress cataloguing in publication data

The United Nations and international law / edited by Christopher C. Joyner
p. cm.

ISBN 0 521 58379 9. – ISBN 0 521 58659 3 (pbk.)

1. United Nations. 2. International law. I. Joyner, Christopher C.

JX1977.U42575 1997

341.23–dc20 96-43488 CIP

ISBN 0 521 58379 9 hardback

ISBN 0 521 58659 3 paperback

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This volume provides students and scholars with a text that examines, explains, and appraises contributions made by the United Nations to contemporary international law and the law-creating process. The authors consider how UN institutions have made the law, what law has been made, and the extent to which that law has been meaningfully accepted by and evidenced in contemporary state practice. The study first deals with processes and measures that cut across law-making, covering practical as well as conceptual aspects. Then the substantive law is addressed in terms of the different fields of activity that the United Nations has made subject to legal rules and processes. Some chapters cover prominent areas, such as human rights, use of force, and economic relations; others deal with topics that have not previously been examined with sufficient care, such as labor, the environment, refugees, and women. The book's final section deals with the internal law of the UN system itself – the international civil services and financial contributions.

PREFACE

This volume is the revised, abridged product of the United Nations Legal Order (UNLO) project, a three-year multidimensional study sponsored by the American Society of International Law and funded by a grant from the Ford Foundation. The principal aim of the project was to assess the evolving importance, present competence, and future roles played by the United Nations system in shaping and enhancing the contemporary international legal order. As the study progressed, its timing became especially appropriate. Not only was the UNLO project conceived and carried out during the United Nations' declared "Decade of International Law"; its published product, *United Nations Legal Order*, also appeared on the eve of the celebration of the United Nations' fiftieth anniversary in 1995. Publication of that study hence took on even more significance as a retrospective assessment of UN law-creation at the Organization's half-century mark of life.

This volume embodies much of the UNLO project, although in abridged form. The fundamental purpose of UNLO was to examine, explain, and appraise contributions made by the United Nations System to international law and the law-creating process. The broad design of this condensed study, therefore, aims to analyze and assess contributions of the United Nations to the post-World War II international legal order, especially that law which has persisted into the present legal order. This involves a critical appraisal of how UN institutions have made the law, what law has been made, and the extent to which that law has been meaningfully accepted by and evidenced in contemporary state practice.

The main themes of the volume converge into several related questions: How is international law made, revised, or repealed by UN institutions? What contemporary operative international law owes its existence to the United Nations? How have UN bodies served as sources of international law? How do they create international law? What forms of law –

conventions, principles, customary norms – stand as evidence of this UN law-creating function, and to what degree can this law be said to work as an effective regulator of state conduct? In sum, have viable legal regimes been created or advanced by UN institutions for dealing with international problems? How so? And in what ways is that United Nations-produced law enforced, and how is compliance induced? By substantively addressing these questions, this study supplies a coherent and relevant appraisal of the ways and means in which the United Nations Organization has made concrete, salient contributions to the contemporary international legal order.

From its inception, the UNLO project aimed at bringing together a group of international lawyers and experts from different parts of the world, with different experience in United Nations matters. Completion of this substantially revised edition was equally challenging. Such a revision entails certain risks and difficulties. Early on, two obvious risks became apparent: First, events affecting the role of the United Nations in world affairs happened so rapidly and with such profound implications during the mid-1990s that considerable updating and revisions would have to be made. Would every selected author be willing to return to this project, undertake such tedious tasks, and do so in an expeditious manner? The second risk also grew from time considerations: Would some contributors be overly committed to other professional activities and thus be unable to complete abridging and updating their own pieces? Fortunately for the finished product, these concerns proved to be unfounded.

With respect to difficulties, it is not hard to appreciate the problems of communicating with fifteen colleagues located in several countries, and coordinating revision of *United Nations Legal Order* between the editor, staff at the American Society of International Law, and Cambridge University Press. These difficulties proved merely inconveniences, not impediments, thanks largely to smooth cooperation by all parties concerned.

It is customary and proper to thank people and institutions who have assisted in various ways to help bring this volume into being. In the case of the original UNLO project, special mention must be given to the Ford Foundation for its generous financial support and patience throughout the entire course of this project. Without this Ford Foundation support, the UNLO project could never have been as comprehensive in scope or authoritative in substance as it became. Nor would the present volume ever have emerged as its offspring. Likewise, a great intellectual debt is owed John Lawrence Hargrove, who in his capacity as Executive Director of the American Society of International Law personally wrote the grant proposal to the Ford Foundation. It was Larry who conceived of the UNLO project,

who secured the funding for its promotion, and who personally worked to select several individuals who came to be contributing authors. His contribution was substantial and lasting.

Thanks are also due to the School of Law at Columbia University and to the American Society of International Law for hosting various meetings of the authors. The staff of the American Society of International Law in Tillar House, in particular Jill Watson and Sandra Liebel, greatly assisted in hosting two early committee meetings that discussed the substance and outlined the structure of the original United Nations Legal Order project.

Marilou Righini, ASIL Director of Publications, deserves special mention. The present volume is largely a product of her imagination and persistence. Marilou was instrumental in persuading this editor that such a revision was necessary and that it would be useful in the classroom setting. She moreover was especially helpful in facilitating publication arrangements with Cambridge University Press.

Special thanks are due to George Little and Tamara Wittes, my research assistants at Georgetown University, whose services were of considerable value in the production phases of editing the manuscripts. Likewise, a number of my former George Washington University students rendered valuable assistance in researching and cite-checking materials. Jocelyn Aqua and Douglas Miller were particularly helpful in that regard.

The production staff at Cambridge University Press has been superb indeed. Special gratitude is owed to John Haslam, Commissioning Editor of Social Sciences, for his courtesy, professionalism, and constant encouragement during the preparation of the manuscript. John's friendly nature was much appreciated. I also wish to thank Caroline Drake and especially Mary Starkey for their excellent editorial and copy services and Lyn Chatterton for keeping the publication production of this volume on schedule.

My greatest personal debts are owed to two special people who made the UNLO project happen. First, Oscar Schachter, co-editor of the volumes comprising *United Nations Legal Order*, made enormous intellectual contributions to the original manuscripts. His keen insights during the editorial review process helped all involved in the project to focus their analysis on substantive issues of international law. His extensive personal experience with the United Nations, coupled with an invaluable historical perspective of the institution, added a critical evenhandedness to the treatments. It was this balance that permitted the authors to more thoroughly weigh and objectively assess the process of law-creation through the United Nations Organization. We all learned much from his legal perspicacity.

The second person to whom particular gratitude is owed is Charlotte

PREFACE

Ku, Executive Director of the ASIL. Throughout the original UNLO project, she acted as liaison, facilitator, and coordinator, and became the engine that kept "UNLO" running on course and on time. I am especially grateful for her constant support, sincere dedication, and personal encouragement in helping to bring this project to fruition.

More than any others, though, thanks are due to the group of colleagues who generously gave of their intellectual resources and valuable time to make possible the completion of the original study, but most especially this updated, abridged revision. Their effort was truly a collective one. Their patience, cooperation, and legal insights are genuinely appreciated. My sincere gratitude to all.

Christopher C. Joyner
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Stephen Zamora is Dean and Professor of Law at the University of Houston Law Center. He has served as Chairman of the International Economic Law Interest Group of the American Society of International Law, and is a member of the Bretton Woods Committee. His publications include a two-volume reference work (with Professor Ronald Brand) entitled *Basic Documents of International Economic Law*, as well as numerous articles on international economic law subjects. He is also a General Editor of a computer database on international economic law that is on-line with LEXIS and WESTLAW.

TABLE OF CASES

Advisory Opinion on the Continued Presence of South Africa in Namibia
(South West Africa)
Advisory Opinion Relating to Reparation for Injuries Suffered in the
Service of the United Nations
Advisory Opinion on Reservations to the Genocide Convention
AngloIranian Oil Company case
Ato del Avellanal v. Peru
Attorney General v. Unity Dow
Aumeeruddy-Cziffra et al. v. Mauritius
Barcelona Traction Case
Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)
Broeks v. The Netherlands
Callejo v. Bancomer
Campos-Guardado v. INS
Canas-Segovia v. INS
Certain Expenses of the United Nations
Chorzow Factory case (*Germany v. Poland*)
Continental Shelf case (*Libyan Arab Jamahiriya v. Malta*)
Continental Shelf case (*Tunisia v. Libya*)
Corfu Channel case (*United Kingdom v. Albania*)
Dwomoh v. Sava
Elettronica Siculo S.p.A (ELSI) case
Filartiga v. Pena-Irala
Fisheries case (*United Kingdom v. Norway*)
Fisheries Jurisdiction case (*United Kingdom v. Iceland*)
Gulf of Maine, Delimitation of Maritime Boundaries in (*Canada v. United
States*)
Haitian Centers Council, Inc. v. McNary
Haitian Refugee Center, Inc. v. Baker

TABLE OF CASES

Haitian Refugee Center, Inc. v. Gracey
INS v. Cardoza-Fonseca
INS v. Elias-Zacarias
Interhandel case
Interpretation of Peace Treaties case
J. H. Rayner Ltd v. Department of Trade and Industry
Lotus case (France v. Turkey)
Lovelace v. Canada
Maclaine Watson & Co. Ltd. v. Department of Trade and Industry
Mazilu case
Monroe case
Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States*)
Musgrove v. Chun Teeong Toy
Nishima Ekiu v. The United States
North Sea Continental Shelf cases
Nottebohm case
Nuclear Tests case (*Australia v. France*)
Rodriguez-Fernandez v. Wilkinson
Sale v. Haitian Centers Council, Inc.
Texas Overseas Petroleum Co. v. Libyan Arab Republic
Trail Smelter Arbitration (*United States v. Canada*)
United States Diplomatic and Consular Staff in Tehran (*United States v. Iran*)
USA (right of Nationals of) in Morocco case
Western Sahara, advisory opinion on
Yilmaz-Dogan v. The Netherlands
Zwaan-de Vries v. The Netherlands

ABBREVIATIONS

General

CCITT	International Telephone and Telegraph Consultative Committee
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CFR	Code of Federal Regulations (USA)
CITES	Convention on International Trade in Endangered Species
COLREG	Convention on the International Regulations for Preventing Collisions at Sea
COPUOS	Committee on the Peaceful Uses of Outer Space
ECOSOC	United Nations Economic and Social Council
EEC	European Economic Community
FAC	Food Aid Convention
FAO	Food and Agriculture Organization
GA Res.	United Nations General Assembly Resolution
GATT	General Agreement on Tariffs and Trade
GEMS	Global Environmental Monitoring System
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development (World Bank)
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICSID	International Centre for the Settlement of Investment Disputes
IDA	International Development Association