

Volume 114 ■ Issue 3 ■ July 2020

ISSN 0002-9300

AJIL

# American Journal of International Law

## INSIDE THIS ISSUE

- The Transformation of International Tax  
Ruth Mason
- International Transformative  
Constitutionalism in Latin America  
Armin von Bogdandy and René Uruña
- Current Developments  
Brexit, the EU-UK Withdrawal  
Agreement, and Global Treaty  
(Re-)Negotiations  
Joris Larik

## BOARD OF EDITORS

### *Editors in Chief*

CURTIS A. BRADLEY  
Duke University School of Law

LAURENCE R. HELFER  
Duke University School of Law

ANNE VAN AAKEN  
University of St. Gallen  
DAPO AKANDE  
Oxford University  
KAREN J. ALTER  
Northwestern University  
ANTONY ANGHIE  
National University of Singapore  
KARIMA BENNOUNE  
Univ. of California, Davis School of Law  
LAURENCE BOISSON DE CHAZOURNES  
University of Geneva School of Law  
GRÁINNE DE BÚRCA  
New York University School of Law  
BHUPINDER SINGH CHIMNI  
Jawaharlal Nehru University  
HARLAN GRANT COHEN  
University of Georgia School of Law  
ASHLEY DEEKS  
University of Virginia School of Law  
JEFFREY DUNOFF  
Temple University Beasley School of Law  
MELISSA J. DURKEE  
University of Georgia School of Law  
JEAN GALBRAITH  
University of Pennsylvania Carey Law School  
JAMES THUO GATHII  
Loyola University Chicago School of Law  
TOM GINSBURG  
University of Chicago Law School

JACK GOLDSMITH  
Harvard Law School  
MONICA HAKIMI  
University of Michigan Law School  
ALEXANDRA HUNEEUS  
University of Wisconsin Law School  
BING BING JIA  
Tsinghua University School of Law  
FLEUR JOHNS  
Univ. of New South Wales, Sydney School of Law  
KAREN KNOP  
University of Toronto Faculty of Law  
JOHN H. KNOX  
Wake Forest University School of Law  
KATERINA LINOS  
Univ. of California, Berkeley School of Law  
CATHERINE POWELL  
Fordham Law School  
NATALIE REID  
Debevoise & Plimpton  
HENRY J. RICHARDSON III  
Temple University Beasley School of Law  
ANTHEA ROBERTS  
Australian National University  
GREGORY SHAFFER  
Univ. of California, Irvine School of Law

### *ex officio*

CATHERINE AMIRFAR  
Debevoise & Plimpton

MARK DAVID AGRAST  
American Society of International Law

### *Honorary Editors*

GEORGE H. ALDRICH\*  
St. Michaels, Maryland  
JOSÉ ALVAREZ  
New York University School of Law  
MAHNOUSH ARSANJANI  
New Haven, Connecticut  
RICHARD B. BILDER  
University of Wisconsin Law School  
CHARLES N. BROWER  
The Hague, the Netherlands  
EDITH BROWN WEISS  
Georgetown University Law Center  
THOMAS BUERGENTHAL  
George Washington Univ. Law School  
CHRISTINE M. CHINKIN  
London School of Economics  
JAMES R. CRAWFORD  
The Hague, the Netherlands  
JOHN R. CROOK  
Potomac, Maryland  
LORI FISLER DAMROSCH  
Columbia Law School  
RICHARD A. FALK  
University of California, Santa Barbara  
TOM J. FARER  
University of Denver  
MICHAEL J. GLENNON  
Fletcher School, Tufts University

*Senior Copyeditor*  
ERIN LOVALL  
*Cite-checker*  
MEGAN CARROLL

*Administrative Editor*  
MEAGHAN KELLY

CYNTHIA CRAWFORD LICHTENSTEIN  
Boston College Law School  
DAVID A. MARTIN  
University of Virginia School of Law  
MICHAEL J. MATHESON  
George Washington Univ. Law School  
THEODOR MERON  
Oxford University  
JOHN NORTON MOORE  
University of Virginia School of Law  
BERNARD H. OXMAN  
University of Miami School of Law  
W. MICHAEL REISMAN  
Yale Law School  
STEPHEN M. SCHWEBEL  
South Woodstock, Vermont  
DINAH L. SHELTON  
George Washington Univ. Law School  
DAVID P. STEWART  
Georgetown University Law Center  
PETER D. TROOBOFF  
Covington & Burling LLP  
RUTH WEDGWOOD  
Johns Hopkins University

### *Submissions Editors 2020–21*

JONATHAN J. CHOI  
OLIVIA CORAL DANIELS  
J. CONNOR DAUGHTON  
MARYAM KANNA  
REBECCA E. THOMPSON  
SIQI WANG  
BAILEY WILLIAMS

## AMERICAN JOURNAL OF INTERNATIONAL LAW

The *American Journal of International Law* (*AJIL*) has been published quarterly since 1907. It features articles, essays, and editorial comments by pre-eminent scholars on developments in international law and international relations. *AJIL* contains summaries and analyses of decisions by national and international courts and arbitral or other tribunals, and of contemporary U.S. practice in international law. Each issue lists recent publications in English and other languages, many of which are reviewed in depth. The *AJIL* is indispensable for all professionals working in international law, economics, trade, and foreign affairs.

*AJIL* (ISSN: 0002-9300) is published quarterly (January, April, July, October) in print and digitally by Cambridge University Press (One Liberty Plaza, 20th floor, New York, NY 10006) on behalf of the American Society of International Law. Periodicals postage rate paid at New York, NY, and at additional mailing offices. POSTMASTER: Send address changes in the USA, Canada, and Mexico to: *American Journal of International Law*, Cambridge University Press, Journals Fulfillment Department, One Liberty Plaza, 20th floor, New York, NY 10006. Send address changes elsewhere to *American Journal of International Law*, Cambridge University Press, Journals Fulfillment Department, UPH, Shaftesbury Road, Cambridge CB2 8BS, England.

As a nonpartisan organization whose members hold a diversity of views, the Society refrains from taking positions on policy matters, except in accordance with the formal process set forth in the ASIL Constitution and Regulations. The views expressed in the articles, editorial comments, book reviews, and all other contributions to *AJIL* are those of the individual authors and do not necessarily represent the views of the Board of Editors or the Society.

## THE AMERICAN SOCIETY OF INTERNATIONAL LAW

The American Society of International Law (ASIL) is a nonprofit, nonpartisan, educational membership organization founded in 1906 by U.S. Secretary of State Elihu Root and chartered by Congress in 1950. Headquartered in Washington, D.C., its mission is “to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice.” ASIL holds Special Consultative Status with the Economic and Social Council of the United Nations and is a constituent society of the American Council of Learned Societies.

ASIL’s nearly four thousand members hail from more than one hundred nations with nearly 40 percent residing outside the United States. Its members include scholars, jurists, practitioners, government officials, leaders in international and nongovernmental organizations, students, and others interested in international law. Through its many publications, conferences, briefings, and educational events, ASIL seeks to serve the needs of its diverse membership and to advance understanding of international law among policymakers and the public.

ASIL is a volunteer-led organization governed by a sixty-member Executive Council elected by its membership. In partnership with the elected leadership, ASIL is led by an executive director and supported by a professional staff.

**Become a member**

[asil.org/membership](http://asil.org/membership)

**Join one of the Society’s Partner Programs and receive complimentary ad space in *AJIL***

[asil.org/financial-support/sponsors-and-institutional-supporters](http://asil.org/financial-support/sponsors-and-institutional-supporters)

**Follow the Society on Twitter**

[twitter.com/asilorg](https://twitter.com/asilorg)

**Like us on Facebook**

[facebook.com/AmericanSocietyofInternationalLaw](https://facebook.com/AmericanSocietyofInternationalLaw)

## OFFICERS AND EXECUTIVE COUNCIL OF THE SOCIETY, 2020–2021

*President* . . . . . CATHERINE AMIRFAR  
*Honorary President* . . . . . PATRICK ROBINSON  
*Vice Presidents* . . . . . ANDREA K. BJORKLUND, DAVID W. BOWKER, MARINN F. CARLSON, DAVID J. SCHEFFER  
*Executive Vice President and Executive Director* . . . . . MARK DAVID AGRAS  
*Secretary* . . . . . JAMES A. R. NAFZIGER  
*Treasurer* . . . . . NANCY L. PERKINS  
*Assistant Treasurer* . . . . . RONALD J. BETTAUER  
*Audit Committee Chair* . . . . . SUSAN KARAMANIAN

*Past Presidents*: JOSÉ E. ALVAREZ, CHARLES N. BROWER, JAMES H. CARTER, LORI FISLER DAMROSCH, DONALD FRANCIS DONOVAN, LUCINDA A. LOW, SEAN D. MURPHY, LUCY F. REED, ARTHUR W. ROVINE, ANNE-MARIE SLAUGHTER, PETER D. TROOBOFF, EDITH BROWN WEISS

*Honorary Vice Presidents*: LORI FISLER DAMROSCH, LUCINDA A. LOW, SEAN D. MURPHY

*Council Members*: JULIAN ARATO, PERRY S. BECHKY, MARNEY L. CHEEK, KATHLEEN E. CLAUSSEN, JACOB KATZ COGAN, STEVEN A. CROWN, MELISSA J. (MJ) DURKEE, REBECCA HAMILTON, STEVEN HILL, CHRISTINA HIOUREAS, REBECCA INGBER, ERIC TALBOT JENSEN, ALOYSIUS (LOUIE) LLAMZON, TIYANJANA MALUWA, DAVID H. MOORE, TAFADZWA PASIPANODYA, PATRICK W. PEARSALL, MARK A. POLLACK, CATHERINE POWELL, BRUCE C. RASHKOW, CAROLINE S. RICHARD, SONIA E. ROLLAND, ELIZABETH TRUJILLO, JARROD WONG

*Counsellors*: DIANE MARIE AMANN, LAURENCE BOISSON DE CHAZOURNES, NICOLA BONUCCI, JOHN R. CROOK, MARCELLA DAVID, TIMOTHY L. DICKINSON, BRIAN EGAN, JAMES T. GATHI, XUE HANQIN, PETER MASON, M. MARGARET MCKEOWN, NATALIE Y. MORRIS-SHARMA, JOSEPH E. NEUHAUS, STEPHEN W. PRESTON, BALAKRISHNAN RAJAGOPAL, STEVEN R. RATNER, NATALIE REID, LEILA NADYA SADAT, DAN SAROOSHI, STEVEN M. SCHNEEBAUM, RICHARD H. STEINBERG, JANE E. STROMSETH, BRUCE C. SWARTZ, PETER TOMKA

## PHILANTHROPY AND THE SOCIETY

The American Society of International Law is grateful to its Patrons and the many members who contribute to the Annual Fund and the Endowment. Patron-level donors and Heritage Circle members who have included the Society in their estate plans are acknowledged below. The Society gratefully acknowledges the support of its Law Firm, Publisher and Academic Partners, who are listed on the next page. All institutional partners and individual donors of \$500 and above are acknowledged in the Society's annual Year-in-Review for the year in which the gift was made.

### LEADERSHIP PATRONS

This category recognizes extraordinary and sustained philanthropic support of the Society.

HOWARD M. HOLTZMANN\*

CHARLES N. BROWER

### PATRONS (2016–)

#### Elihu Root Patron (\$50,000)

ANONYMOUS  
DONALD K. ANTON  
CHARLES N. BROWER  
DONALD FRANCIS DONOVAN AND  
JENNIFER LAKE  
SUSAN L. KARAMANIAN  
LUCINDA A. LOW AND  
DANIEL B. MAGRAW  
LUCY F. REED  
ARTHUR W. ROVINE

#### Cordell Hull Patron (\$25,000)

CATHERINE M. AMIRFAR  
LORI FISLER DAMROSCH AND JEAN FISLER  
R. DOAK BISHOP  
JAMES H. CARTER  
TAI-HENG CHENG  
ELI WHITNEY DEBEVOISE II  
EDWARD G. KEHOE  
JAMES G. LEITNER AND TRACY HIGGINS

SEAN D. MURPHY AND JULIE MURPHY  
PAUL S. REICHLER

#### James Brown Scott Patron (\$15,000)

MARK D. AGRAST AND DAVID M. HOLLIS  
JOSÉ E. ALVAREZ AND SUSAN DAMPLO  
ANDREA K. BJORKLUND  
CHARLES H. CAMP  
DAVID COLSON  
STEVEN CROWN  
TIMOTHY L. DICKINSON  
GLENN P. HENDRIX  
CHRISTINA HIOUREAS  
O. THOMAS JOHNSON  
ERIC J. KADEL  
JUDD KESSLER  
BENEDICT KINGSBURY  
CHARLOTTE KU  
EDWARD KWAKWA  
ALOYSIUS LLAMZON  
ERIC C. MALLEY

PEDRO MARTINEZ-FRAGA  
BRYAN MACPHERSON  
STEPHEN C. MCCAFFREY  
GABRIELLE KIRK MCDONALD  
JAMES A. R. NAFZIGER  
JOSEPH E. NEUHAUS  
DANIEL M. PRICE  
NATALIE L. REID  
CAROLINE S. RICHARD  
ANDRES RIGO SUREDA  
STEVEN M. SCHNEEBaum  
MORTIMER N.S. SELLERS  
JUDGE BRUNO E. SIMMA  
BETH VAN SCHAACK  
ROBERT G. VOLTERRA  
DON WALLACE, JR.  
ADRIEN K. WING  
MARCIA A. WISS  
SIR MICHAEL CHARLES WOOD

### LEGACY PATRONS (TO 2016)

DOMINGO E. ACEVEDO  
GERALD AKSEN  
ARTHUR R. ALBRECHT  
TEYMOUR A. ALIREZA\*  
GEORGE H. ALDRICH  
DIANE MARIE AMANN  
JAMES G. APPLE\*  
FRANK A. BAUMAN\*  
MRS. RICHARD BAXTER\*  
DAVID J. BEDERMAN\* AND  
LORRE B. CUZZE  
DANIEL L. BETHLEHEM  
RICHARD B. BILDER  
JOHN A. BOYD  
JOHN BRISCOE  
CHARLES N. BROWER  
IAN BROWNLE\*  
EDITH BROWN WEISS  
LEE C. BUCHHEIT  
THOMAS BUERGENTHAL  
WILLIAM J. BUTLER  
DAVID D. CARON\* AND SUSAN  
SPENCER  
HUGO AND SUSANA CAMINOS  
JAMES RICHARD CRAWFORD  
JOHN R. CROOK  
ANTHONY D'AMATO\*  
ARTHUR H. DEAN\*  
SARAH WHITCRAFT DEFORD\*

THOMAS A. DUBBS  
EDWARD DUMBAULD\*  
RICHARD W. EDWARDS, JR.  
ALONA E. EVANS\*  
BENJAMIN B. FERENCZ  
DONALD FERENCZ  
THOMAS M. FRANCK\*  
ALWYN V. FREEMAN\*  
JOHN KING GAMBLE  
RONALD E.M. GOODMAN  
CHRISTOPHER J. GREENWOOD  
JOHN LAWRENCE HARGROVE  
VICTORIA M. HARIRI\*  
OONA A. HATHAWAY  
RITA E. HAUSER  
JOHN N. HAZARD\*  
ALICE AND LOUIS\* HENKIN  
ROBERT E. HERZSTEIN\*  
ROSALYN HIGGINS  
KEITH HIGHT\*  
HOWARD M. HOLTZMANN\*  
CHARLES A. HUNNICUTT  
JOHN H. JACKSON\*  
ANDREW J. JACOVIDES  
MARK R. JOELSON  
RICHARD A. JOHNSON  
KENNETH I. JUSTER  
FREDERIC L. KIRGIS  
JEFFREY LANG

SIR ELIHU LAUTERPACHT\*  
ROY S. LEE  
JEREMY I. AND CANDACE C. LEVITT  
CYNTHIA C. LICHTENSTEIN  
RICHARD B. LILLICH\* AND  
GERDA HEIDEL\*  
A. VAUGHAN LOWE  
ANDREAS F. LOWENFELD\*  
HOUSTON PUTNAM LOWRY  
BRUNSON MACCHESNEY  
ROBERT MACCRATE\*  
RONALD ST. JOHN MACDONALD\*  
D. STEPHEN MATHIAS  
EDWARD WATSON MCWHINNEY\*  
ROBERT F. MEAGHER\*  
THEODOR MERON  
HUSAM MESHAL  
W. ROBERT MORGAN\*  
VED P. NANDA  
ANDRÉ NEWBURG  
MARY ELLEN O'CONNELL  
SHIGERU ODA  
BERNARD H. OXMAN  
JAN PAULSSON  
NANCY L. PERKINS  
HERMAN PHLEGER\*  
B. DONOVAN PICARD  
W. MICHAEL REISMAN AND  
MAHNOUSH H. ARSANJANI

SANG-MYON RHEE  
DAVIS R. ROBINSON  
WILLIAM D. ROGERS\*  
SEYMOUR J. RUBIN\*  
PHILIPPE J. SANDS  
OSCAR SCHACHTER\*  
STEPHEN M. SCHWEBEL  
ANNE-MARIE SLAUGHTER  
ABBY COHEN SMUTNY  
EARL A. SNYDER\*  
BARBARA STARK  
ERIC STEIN\*  
CHARLES W.T. STEPHENSON  
JOHN R. STEVENSON\*  
DAVID P. STEWART  
LAURENCE STORCH  
ENRIQUE P. SYQUIA\*  
GENEVIEVE EAGON TILLAR\*  
PETER D. TROBOFF  
DETLEV F. VAGTS\*  
CHARLES O. VERRILL, JR.  
JILL MCCLANAHAN WATSON  
RUTH WEDGWOOD  
BURNS H. WESTON\*  
EDWIN D. WILLIAMSON  
BASIL S. YANAKAKIS  
NASSIB G. ZIADÉ

### THE ASIL HERITAGE CIRCLE

Members who have advised the Society that they made provisions to include the Society in their estate plans.

ANONYMOUS (2)  
ELIZABETH ANDERSEN  
JAMES G. APPLE\*  
FRANK A. BAUMAN\*  
CHARLES N. BROWER  
JAMES H. CARTER

SARAH WHITCRAFT DEFORD\*  
MICHAEL AND MARY ANN FARLEY  
THOMAS M. FRANCK\*  
CHRISTIAN A. HERTER, JR.\*  
SUSAN L. KARAMANIAN  
CHIMENE KEITNER

CHARLOTTE KU  
CYNTHIA CRAWFORD LICHTENSTEIN  
H.C.L. MERILLAT\*  
SEAN D. AND JULIE MURPHY  
MARY ELLEN O'CONNELL  
LUCY F. REED

OSCAR SCHACHTER\*  
STEPHEN SCHER  
ERIC STEIN\*  
JOHN R. STEVENSON\*  
GENEVIEVE EAGON TILLAR\*  
RICHARD YOUNG

\* deceased

## LAW FIRM PARTNERS

### Platinum

ARNOLD & PORTER  
DEBEVOISE & PLIMPTON LLP  
FOLEY HOAG LLP  
FRESHFIELDS BRUCKHAUS DERINGER LLP  
KING & SPALDING LLP  
WHITE & CASE LLP  
SIDLEY AUSTIN LLP

### Gold

SULLIVAN & CROMWELL LLP

### Bronze

BRYAN CAVE LEIGHTON PAISNER LLP  
COVINGTON & BURLING LLP  
CURTIS MALLET-PREVOST, COLT &  
MOSLE LLP  
STEPTOE & JOHNSON LLP

## PUBLISHER PARTNERS

### Platinum

BRILL NIJHOFF PUBLISHERS  
CAMBRIDGE UNIVERSITY PRESS

### Silver

OXFORD UNIVERSITY PRESS

### Bronze

HART PUBLISHING

## ACADEMIC PARTNERS

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW  
ARIZONA STATE UNIVERSITY SANDRA DAY O'CONNOR COLLEGE OF LAW  
BOSTON UNIVERSITY SCHOOL OF LAW  
BROOKLYN LAW SCHOOL  
CASE WESTERN UNIVERSITY SCHOOL OF LAW  
COLUMBIA LAW SCHOOL  
CORNELL LAW SCHOOL  
DUKE UNIVERSITY SCHOOL OF LAW  
EMORY UNIVERSITY SCHOOL OF LAW  
FLORIDA STATE UNIVERSITY COLLEGE OF LAW  
FORDHAM UNIVERSITY SCHOOL OF LAW  
GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL  
GEORGE WASHINGTON UNIVERSITY LAW SCHOOL  
GEORGETOWN UNIVERSITY LAW CENTER  
GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES OF GENEVA  
HAMAD BIN KHALIFA UNIVERSITY COLLEGE OF LAW AND PUBLIC POLICY  
HARVARD LAW SCHOOL  
INDIANA UNIVERSITY MAURER SCHOOL OF LAW  
INDIANA UNIVERSITY MCKINNEY SCHOOL OF LAW  
LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW  
MCGEORGE SCHOOL OF LAW UNIVERSITY OF THE PACIFIC  
NEW YORK UNIVERSITY SCHOOL OF LAW  
NORTHWESTERN UNIVERSITY PRITZKER SCHOOL OF LAW  
NOTRE DAME LAW SCHOOL  
PENN STATE'S DICKINSON SCHOOL OF LAW  
PEPPERDINE UNIVERSITY SCHOOL OF LAW  
SAINT LOUIS UNIVERSITY SCHOOL OF LAW  
SANTA CLARA UNIVERSITY SCHOOL OF LAW  
STANFORD UNIVERSITY LAW SCHOOL  
SYRACUSE UNIVERSITY COLLEGE OF LAW  
TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW  
UNIVERSITY OF BALTIMORE SCHOOL OF LAW  
UNIVERSITY OF CALIFORNIA, BERKELEY SCHOOL OF LAW  
UNIVERSITY OF CALIFORNIA, DAVIS SCHOOL OF LAW  
UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW  
UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW  
UNIVERSITY OF CALIFORNIA, LOS ANGELES SCHOOL OF LAW  
UNIVERSITY OF CINCINNATI COLLEGE OF LAW  
UNIVERSITY OF COLORADO, BOULDER SCHOOL OF LAW  
UNIVERSITY OF DENVER STURM COLLEGE OF LAW  
UNIVERSITY OF GENEVA FACULTY OF LAW  
UNIVERSITY OF GEORGIA SCHOOL OF LAW  
UNIVERSITY OF HOUSTON LAW CENTER  
UNIVERSITY OF IOWA SCHOOL OF LAW  
UNIVERSITY OF MIAMI SCHOOL OF LAW  
UNIVERSITY OF MICHIGAN LAW SCHOOL  
UNIVERSITY OF OTTAWA FACULTY OF LAW  
UNIVERSITY OF PENNSYLVANIA LAW SCHOOL  
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW  
UNIVERSITY OF RICHMOND SCHOOL OF LAW  
UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW  
UNIVERSITY OF SOUTHERN CALIFORNIA GOULD SCHOOL OF LAW  
VANDERBILT UNIVERSITY LAW SCHOOL  
WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW  
WASHINGTON UNIVERSITY SCHOOL OF LAW  
YALE LAW SCHOOL

## JOURNAL INFORMATION

*AJIL* is published in print and digitally by Cambridge University Press on behalf of the American Society of International Law. To reduce time between acceptance and publication, contributions may appear online as *FirstView* publications in advance of their scheduled publication in an issue. Discover the entire *AJIL* back archive at [www.cambridge.org/ajil/issues](http://www.cambridge.org/ajil/issues).

### Subscriptions

The electronic version of *AJIL* is available to all members of the American Society of International Law by login to the ASIL website [www.asil.org](http://www.asil.org). Print copies are also supplied to all members.

To subscribe as a non-member or recommend a subscription to your librarian go to [www.cambridge.org/ajil](http://www.cambridge.org/ajil).

### Submission of Manuscripts

*AJIL* invites submission of manuscripts on international law subjects. *AJIL*'s coverage extends beyond public international law to closely related issues of global governance, transnational law, and national or sub-state law. It generally does not publish manuscripts focused on purely private or commercial law or on comparative or foreign law, including the internal law of the European Union. *AJIL* will not consider submissions whose content has been, or will be, published before it appears in this journal.

*AJIL* welcomes submissions for **Articles, Essays, and Current Developments** via *AJIL*'s electronic submission website [mc.manuscriptcentral.com/ajil](http://mc.manuscriptcentral.com/ajil) or through Scholastica at [ajil.scholasticahq.com/](http://ajil.scholasticahq.com/).

**Editorial Comments** are written by members of the Board of Editors. Content for the **Contemporary Practice of the United States Relating to International Law** section of *AJIL* is generated by the editor of that section, Jean Galbraith, and outside submissions are not accepted. The **Recent Books on International Law** section contains book reviews that are solicited by invitation of the editor, Richard Bilder. *AJIL* strongly encourages authors and publishers to submit books for review in hard copy to: AJIL Book Review Office, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864, USA.

The **International Decisions** section, edited by Harlan Grant Cohen, focuses on final decisions (not subject to further appeal) of international courts or national courts on international law issues. It consists of contributions that are mostly proposed to the editor by readers of the *AJIL*. Proposals for International Decisions should be sent to [hcohen@uga.edu](mailto:hcohen@uga.edu).

*AJIL Unbound*, an online initiative to supplement *AJIL* by publishing short, original essays, periodically issues open calls for short contributions on specified topics.

*AJIL* is committed to publishing a diversity of authors, whether based in the United States or abroad, and to covering a wide range of subjects and approaches. Suggestions for topics for *AJIL* **symposia or Agora** should be sent to [admin\\_ajil@law.duke.edu](mailto:admin_ajil@law.duke.edu).

**All submissions must follow the *AJIL* Style Guide. Full instructions on how to prepare and submit your paper may be found here:**  
[www.cambridge.org/core/journals/american-journal-of-international-law/information/instructions-contributors](http://www.cambridge.org/core/journals/american-journal-of-international-law/information/instructions-contributors)

### Claims and Address Updates

[subscriptions\\_newyork@cambridge.org](mailto:subscriptions_newyork@cambridge.org) (in the USA, Canada and Mexico)  
[journals@cambridge.org](mailto:journals@cambridge.org) (elsewhere)

### Copyright and Permissions

[www.cambridge.org/about-us/rights-permissions](http://www.cambridge.org/about-us/rights-permissions).

### To Advertise in the Journal

[ad\\_sales@cambridge.org](mailto:ad_sales@cambridge.org)

### Abstracting and Indexing Services

[www.cambridge.org/ajil/abstracting](http://www.cambridge.org/ajil/abstracting)

### For other ASIL Publications

[www.asil.org](http://www.asil.org)

### Proper Citation

*AJIL* shall be cited according to the following example:  
114 *AJIL* 219 (2020)

ISSN: 0002-9300

E-ISSN: 2161-7953

© American Society of International Law

# AMERICAN JOURNAL OF INTERNATIONAL LAW

Vol. 114

July 2020

No. 3

## CONTENTS

PAGE

### **The Transformation of International Tax**

*Ruth Mason*

353

The recession of 2008 precipitated a political crisis that motivated an unprecedented international project to curb corporate tax dodging. This Article argues, contrary to dominant scholarly views, that this effort transformed international tax—changing its participants, agenda, institutions, norms, and even its legal forms. Perhaps most important, efforts to close corporate tax loopholes widened a rift over revenues that threatens a hundred-year-old tax treaty framework. This Article identifies and critically evaluates these changes.

### **International Transformative Constitutionalism in Latin America**

*Armin von Bogdandy and René Uruña*

403

This Article analyzes the rise of international transformative constitutionalism in Latin America and responds to some of the challenges to its legitimacy and effectiveness. It focuses on the practice of the Inter-American Court of Human Rights (IACtHR), the decisions and procedures of which constitute a small, but vibrant and essential, part of a wider Latin American community of human rights—a diverse group of actors who confront violence, social exclusion, and weak institutions through legal means.

### **Current Developments**

Brexit, the EU-UK Withdrawal Agreement, and Global Treaty (Re-)Negotiations

*Joris Larik*

443

### **International Decisions**

*Edited by Harlan Grant Cohen*

*Die Linke v. Federal Government and Federal Parliament* (Christian J. Tams)

463

German Federal Constitutional Court on the constitutionality of Operation Counter Daesh and the availability of self-defense against nonstate actors under the UN Charter

*Constitutionality of the Colombia-France Bilateral Investment Treaty*

(Rafael Tamayo-Álvarez)

471

Colombian Constitutional Court on measures required before ratifying an investment treaty in light of arbitral interpretations of legitimate expectations and fair and equitable treatment

<i>The State of the Netherlands v. Respondents &amp; Stichting Mothers of Srebrenica</i> (Kristen Boon)	479
Supreme Court of the Netherlands on attribution of and compensation for acts and omissions of Dutch peacekeepers	
<i>Deutsche Bahn AG v. Regione Stereá Ellada</i> (Cristina M. Mariottini)	486
Italian Court of Cassation on sovereign immunity for crimes against humanity, enforcement of foreign judgments, and attachment of state assets as compensation	
<b>Contemporary Practice of the United States Relating to International Law</b>	
<i>Edited by Jean Galbraith</i>	
President Trump Impeached and Acquitted of Charges Relating to His Conduct of Foreign Affairs	495
Trump Administration Further Restricts Asylum Seekers at the Southern Border Through the Migrant Protection Protocols, Asylum Cooperative Agreements, and COVID-19 Procedures	504
U.S. Department of Justice Indicts Venezuelan Leader Nicolás Maduro on Narcotrafficking Charges	511
U.S. Refusal to Appoint Members Renders WTO Appellate Body Unable to Hear New Appeals	518
Trump Administration Authorizes U.S. Military Use of Non-persistent Landmines	526
United States Signs Agreement with the Taliban, but Prospects for Its Full Implementation Remain Uncertain	529
<b>Recent Books on International Law</b>	<i>Edited by Richard B. Bilder</i>
<b>Book Reviews</b>	
Bradley, Curtis A. (ed.). <i>Oxford Handbook of Comparative Foreign Relations Law</i> (Thomas Kleinlein)	539
Alter, Karen J., and Laurence R. Helfer. <i>Transplanting International Courts: The Law and Politics of the Andean Tribunal of Justice</i> (Damian Chalmers)	545
Shaffer, Gregory, Tom Ginsburg, and Terence C. Halliday (eds.). <i>Constitution-Making and Transnational Legal Order</i> (David L. Sloss)	549
Chadwick, Mark. <i>Piracy and the Origins of Universal Jurisdiction: On Stranger Tides?</i> (Tullio Scovazzi)	555
Steinitz, Maya. <i>The Case for an International Court of Civil Justice</i> (Stephan W. Schill)	560
<b>Books Received</b>	568
<b>International Legal Materials, Contents, Vol. 59, No. 2, No. 3</b>	570