

1986

Restatement of the Foreign Relations Law of the United States (Revised): Issues and Resolutions

John B. Houck

Recommended Citation

John B. Houck, *Restatement of the Foreign Relations Law of the United States (Revised): Issues and Resolutions*, 20 INT'L L. 1361 (1986)
<https://scholar.smu.edu/til/vol20/iss4/12>

This Current Developments is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

CURRENT DEVELOPMENTS

Restatement of the Foreign Relations Law of the United States (Revised): Issues and Resolutions

I. Introduction.....	1361
II. Controversy Concerning the New Restatement	1363
A. The People and Organizations	1363
B. The Principal Issues	1365
1. Sources of International Law (Section 102) and Evidence of International Law (Section 103)	1365
2. Categories of Jurisdiction Defined (Section 401)	1367
3. Limitations on Jurisdiction to Prescribe (Section 403)....	1368
4. Jurisdiction with Respect to Activities of Foreign Branches and Subsidiaries (Section 414)	1370
5. Jurisdiction to Regulate Activities Related to Securities: Law of the United States (Section 416)	1371
6. Requests for Disclosure and Foreign Government Compulsion: Law of the United States (Section 437).....	1373
7. The Act of State Doctrine: Law of the United States (Section 469).....	1374
8. Economic Injury to Nationals of Other States (Section 712)	1375
III. Final Approval.....	1376
IV. Appendix A	1379
V. Appendix B	1383

I. Introduction

The American Law Institute (ALI) commissioned in 1978 a revision of the Restatement of the Foreign Relations Law of the United States (Sec-

*Partner of Jones, Day, Reavis & Pogue, Los Angeles, California.

ond).¹ The late Richard R. Baxter was originally designated as Chief Reporter but the assignment fell to Prof. Louis Henkin of Columbia University Law School upon Prof. Baxter's appointment to the World Court. Assisting Prof. Henkin as Associate Reporters are Profs. Andreas F. Lowenfeld of New York University, Louis B. Sohn of the University of Georgia (formerly of Harvard University) and Detlev F. Vagts of Harvard. The reporters consulted with two advisory committees, one largely domestic (there is one Canadian) and the other foreign.

In the judgment of the Reporters, the substantial degree of change in international law since publication of the previous Restatement in 1965 dictated a substantial change in coverage and approach. The new Restatement adds subjects not covered, or not covered in detail, in the previous Restatement: the law of the environment, human rights law, and international economic law. The law of the sea, diplomatic relations law, dispute settlement, international cooperation in law enforcement, and sources of international law and its place in U.S. jurisprudence, were selected for greater emphasis. Some subjects treated at length in the previous Restatement, such as recognition of states and governments and the status of foreign military forces, have been deemphasized. The cumulative effect of all these changes on the work has been very substantial and has led the Reporters to entitle it a "Restatement (Revised)" rather than a "Restatement (Third)." The table of contents of the new Restatement appears at the end of this article in Appendix B.

The new Restatement, like its predecessor, represents the opinion of the ALI "as to the rules that an international tribunal would apply if charged with deciding a controversy in accordance with international law."² The Reporters point out that this may not in all cases be the position taken by the United States government.³ The decision on the part of the reporters at various junctures not to adopt the U.S. view is, of course, a major source of the controversies that have surrounded the new Restatement.

According to established ALI procedures, the black letter and commentary of each section must be approved by the ALI membership. The Reporters' Notes that accompany each section are what securities lawyers call "free writing," are not approved by the ALI, and do not necessarily represent the views of the ALI.

1. The impact of the new Restatement—entitled *RESTATEMENT OF FOREIGN RELATIONS OF THE UNITED STATES (Revised)*—even in its draft forms during its six-year production is quite impressive. A recent search of the articles and cases in which the tentative drafts of the new Restatement has been cited generate the list appearing as Appendix A to this article.

2. Tentative Draft No. 6, at 1.

3. Note to members of the ALI accompanying Tentative Draft No. 6, at 1.

II. Controversy Concerning the New Restatement

A. THE PEOPLE AND ORGANIZATIONS

Controversy concerning the new Restatement began with the publication of Tentative Draft No. 1 in 1980, and grew as successive parts of the draft were published year by year. As detailed below, these controversies centered around the treatment of customary international law, expropriation, extraterritorial application of U.S. law, and the act of state doctrine.

In order to prove a focus for collecting comments on the draft Restatement and for providing feedback to the Reporters, the ABA Section of International Law and Practice (SILP) in 1980 established an ad hoc committee, first under the chairmanship of the writer and later under Prof. Don Wallace, Jr.⁴ Other SILP committees also were involved from time to time with specific aspects of the draft Restatement, in particular the Committee on the Extraterritorial Application of United States Law, the Committee on the International Aspects of Antitrust Law, and the International Taxation Committee.

While this was going on, a group headed by Peter D. Trooboff and Brice M. Clagett of the District of Columbia Bar mounted a well-organized attack on the treatment of expropriation in sections 712 and 713 of the draft Restatement. They proposed at the 1982 ALI annual meeting that these sections be disapproved and that the reporters be instructed to go back to what the previous Restatement had said on the subject of expropriation. This proposal was defeated but it began a process (explained in greater detail below) by which the reporters finally arrived at a version more nearly reflecting the Trooboff-Clagett view.

What was needed, beyond confrontations on the floor of the ALI, was an opportunity on an informal basis for an exchange of views between the reporters and their critics (a group which by that time had grown beyond SILP to include representatives of at least five U.S. government departments and agencies). This opportunity was provided by Herbert J. Hansell, a former legal adviser to the State Department, and Prof. Geoffrey C. Hazard, Jr., the newly-appointed director of ALI, who arranged a series of meetings in Washington between Prof. Henkin and his principal critics. These meetings promptly resolved some of the open issues; as to the remainder, these meetings at least served the function

4. Others who as committee members made a significant contribution to this effort included Charles N. Brower, Stuart Chessman, Peter D. Ehrenhaft, Mark B. Feldman, David G. Gill, Prof. Malvina Halberstam, Prof. Barry E. Hawk, Mont P. Hoyt, Prof. John Jackson, Prof. Mark W. Janis, Mark R. Joelson, Sean M. McMillan, Prof. John Norton Moore, Robert S. Rendell, and Arthur W. Rovine. Prof. Louis B. Sohn provided helpful communication between the committee and the Reporters. Numerous other SILP members not members of the committee also made important contributions.

of making it clear to the ALI administration what the principal issues were and what arguments were being advanced by the reporters' critics in support of their positions.

The Restatement project had by that time progressed through five tentative drafts, each representing only a portion of the entire work. The reporters had promised to make or consider making numerous changes suggested to them at various ALI annual meetings and at private conferences with representatives of SILP and governmental agencies, but most of the affected sections had not been republished. It was exceedingly difficult at that stage of the project to visualize what the final Restatement would look like. The Section of International Law and Practice accordingly recommended that a complete, composite draft be published and that a full year be allowed for comment on that new draft. Only in this way, SILP urged, would it be possible for interested parties to respond to the Restatement as a whole and to see how the reporters had dealt with earlier comments.

At first, the ALI declined to consider either publication of a complete new draft or a year's delay. Strong support for SILP's position, however, came from the State Department, the Attorney General, the Departments of Treasury and Commerce, the Securities and Exchange Commission, the General Counsel of the Federal Reserve System, the Board of Governors of the ABA and other bar associations. Finally, at its 1985 annual meeting, the ALI conceded.

In his statement to that meeting,⁵ ALI President Roswell B. Perkins emphasized that the Restatement is intended to represent an independent professional and scholarly view of foreign relations law and not necessarily the views of the United States government, and he insisted that the independence of the ALI and the integrity of its deliberations be safeguarded. At the same time, he said that respect for the official sources requesting further review had led the Council of the ALI to recommend such a further opportunity. Accordingly, he outlined a program which called for a complete, composite draft to be published by July 1985 with an opportunity for comment by December 2 of that year, with the intention of bringing the Restatement before the ALI for a final vote at its annual meeting in 1986.

How was the additional year used? The State Department supplied to the reporters hundreds of comments on matters big and small, mostly small; an accommodation was reached with the Securities and Exchange Commission on the matters of concern to that agency; and adjustments were made that satisfied the technical objections of Treasury, the Federal

5. Reprinted at pp. xvii-xxi of Tentative Draft No. 7.

Reserve and the Justice Department. Numerous additional comments were supplied to the reporters from other sources.

The ALI Council's decision to grant a year's delay was, in the writer's view, enormously helpful in achieving some further improvements in the Restatement and, even more importantly, in building a consensus that the Restatement was produced in an atmosphere that permitted full and fair consideration and is deserving of widespread support in the international legal community.

Described below are some of the elements of the Restatement that generated the greatest amount of controversy, and the process by which these controversies were, or were not, resolved. In reviewing these "newsworthy" items, however, the reader is asked to keep in mind that the number of sections in controversy was very small in relation to the work as a whole: most of the Restatement was accepted without significant comment.

B. THE PRINCIPAL ISSUES

1. *Sources of International Law (Section 102) and Evidence of International Law (Section 103)*

Section 102 of the Restatement identifies sources of international law. Customary international law is listed first and international agreements second, thus reversing the order in which those sources are listed in article 38(1) of the Statute of the International Court of Justice. Neither listing is intended to create a hierarchy but this reversal of order is one of several indications in the Restatement that the Reporters intend an enhanced role for customary international law.

Comment *j* to section 102 sets forth the proposition that customary international law and law made by international agreement have equal authority as international law. In the original version of Comment *j*, this proposition led the Reporters to conclude that "[U]nless particular states have evinced a contrary intention, a new rule of customary international law will supersede any inconsistent obligations created by earlier agreement."⁶ To the same effect was the commentary to section 135, which deals with inconsistencies between international law and domestic U.S. law.⁷ The reporters appear to have been led to this conclusion in significant part by the ease with which the United States and numerous other states had accepted that some provisions of the 1958 Law of the Sea Conventions had been superseded by an expanded "customary" view of coastal state

6. Tentative Draft No. 1, at 28.

7. *Id.* at 66.

jurisdiction over international waters, the continental shelf and an exclusive economic zone.

Numerous critics of the new Restatement found troubling the idea that, as a general matter, evolving customary international law would supersede prior inconsistent treaties.⁸ The reporters dealt with these criticisms by providing in Comment *j* to section 102 that customary international law will supersede inconsistent obligations created by earlier agreement only "if the parties so intend and the intention is clearly manifested."⁹ The commentary to section 135 was softened to state that "Whether a rule of customary international law that developed after, and is inconsistent with, an earlier statute or international agreement of the United States should be given effect as the law of the United States, has . . . not been authoritatively determined."¹⁰

As originally proposed, section 103, Evidence of International Law, stated in black letter that "In determining whether a rule has been accepted as international law substantial weight is accorded to . . . resolutions of international organizations."¹¹ Comment *c* stated that:

Such a resolution is strong evidence of what the states voting for it regard as the state of the law. The probative quality of such a resolution as to the state of the law is greater if it is supported by a large majority of states. The weight of such a resolution is less if it is challenged by the states principally affected by the alleged rule of law.¹²

The reader will not be surprised to learn that these formulations in section 103 were objected to by many who decline to treat resolutions of the United Nations General Assembly as evidence of international law, but rather highly politicized statements of Third World countries directed against the United States and other capital-exporting nations.

The reporters have responded to these criticisms changing the black letter so that substantial weight is accorded to "resolutions of universal international organizations that state the rule as international law, if adopted by consensus or virtual unanimity."¹³ Comment *c* now provides that:

Although international organizations generally have no authority to make law, and their determinations of law ordinarily have no special weight, such a resolution is some evidence of what the states voting for it regard as the state of the law. The evidentiary value of such a resolution as to the state of the law is variable.¹⁴

8. See Chessman, Appendix A *infra*.

9. Tentative Draft No. 6, at 33.

10. *Id.* at 80-1.

11. Tentative Draft No. 1, at 35.

12. *Id.* at 36-7.

13. Tentative Draft No. 6, at 44. The language "state the rule as" may be changed in the final version to "relate to."

14. *Id.* at 46.

2. *Categories of Jurisdiction Defined (Section 401)*

In considering whether a state had authority to apply its law internationally, the 1965 Restatement distinguished between "jurisdiction to prescribe" and "jurisdiction to enforce." The former referred to the authority of a state to make its substantive law applicable to persons and activities on an international basis and, because a state's prescriptions normally took the form of domestic legislation, this was sometimes referred to as "legislative jurisdiction." Jurisdiction to enforce referred to the authority of a state to compel compliance with its law. When enforcement was through the courts, this jurisdiction was sometimes referred to as "jurisdiction to adjudicate."

Page IV of the new Restatement is concerned in large part with limitations on state authority to exercise jurisdiction in a transnational context and with resolutions of conflicting claims of jurisdiction between states. The Reporters thought that analysis of these issues might be assisted if state jurisdiction were broken down into three categories instead of the traditional two. Accordingly, section 401 provides:

Under international law, a state is subject to limitations on its authority to exercise

(1) "jurisdiction to prescribe," i.e., to make its law applicable to the activities, relations, or status of persons, or the interests of persons in things, whether by legislation, by executive act or order, by administrative rule or regulation, or by determination of a court;

(2) "jurisdiction to adjudicate," i.e., to subject persons or things to the process of its courts or administrative tribunals, whether in civil or in criminal proceedings, and whether or not the state is a party to the proceedings; and

(3) "jurisdiction to enforce," i.e., to induce or compel compliance or punish non-compliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other non-judicial action.¹⁵

There was a great deal of questioning by the ALI Advisers and the ALI membership as to whether departure from the traditional breakdown of jurisdictional aspects was desirable or useful. In part, this was simply a reaction to the novelty of the proposal. In larger part, however, this reaction was based on uncertainty as to where the three-fold analysis would lead: Section 401 was first published in 1981,¹⁶ and the shape that the remainder of part IV would take was at that time uncertain.

The reporters held their critics at bay by assuring them that the final version of part IV would explain and justify the three-fold analysis. And it seems to have worked out that way: now that the full version of part IV is available the earlier criticism has largely evaporated. There are still those who would prefer to retain the traditional analysis but they now

15. Tentative Draft No. 6, at 182.

16. Tentative Draft No. 2.

appear to be satisfied that the three-part analysis does not produce any specific problem in the Restatement.

3. *Limitations on Jurisdiction to Prescribe (Section 403)*

In 1979, Prof. Lowenfeld delivered a series of lectures at The Hague Academy of International Law¹⁷ in which he described a system for reducing collisions between legal systems by reference to various balancing factors. These balancing factors seek to determine which state has the greater contacts with the matter in question and which state has greater interests in regulating the matter, and additionally give weight to the reasonable expectations of the parties as to which law will govern.

Section 403 of the new Restatement embodies the balancing system advocated by the Hague Lectures. Whether the exercise of jurisdiction by a state is reasonable or unreasonable is determined by reference to all relevant factors, including the following:

(a) the extent to which the activity (i) takes place within the regulating state, or (ii) has substantial, direct, and foreseeable effect upon or in the regulating state;

(b) the connections, such as nationality, residence, or economic activity, between the regulating state and the persons principally responsible for the activity to be regulated, or between that state and those whom the law or regulation is designed to protect;

(c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;

(d) the existence of justified expectations that might be protected or hurt by the regulation in question;

(e) the importance of the regulation in question to the international political, legal or economic system;

(f) the extent to which such regulation is consistent with the traditions of the international system;

(g) the extent to which another state may have an interest in regulating the activity; and

(h) the likelihood of conflict with regulation by other states.¹⁸

Section 403 (3), as originally proposed,¹⁹ said that an assertion of jurisdiction which ordinarily would not be unreasonable might become unreasonable if it requires a person to take action which would violate a regulation of another state which is itself not unreasonable. Conflicting claims of jurisdiction in these cases are to be resolved by evaluating the respective interests of the regulating states in light of the balancing factors.

17. "Public Law in the International Arena: Conflict of Laws, International Law, and Some Suggestions for Their Interaction," Hague Academy, 163 *Recueil des Cours* 321 (1979), hereinafter cited as the Hague Lectures.

18. Tentative Draft No. 7, at 1-2.

19. Tentative Draft No. 2, at 105.

In regard to the law of the United States, the original version of section 403(4) called for U.S. statutes and regulations to be construed as applying in the international sphere only to the extent consistent with the limits imposed by section 403(2) unless such a construction is not fairly possible. It also provided that where Congress clearly intends to exercise jurisdiction beyond those limits, such jurisdiction is effective as U.S. law but not internationally.²⁰

The previous Restatement also had provided a set of balancing factors.²¹ When each of two states had jurisdiction and prescribed inconsistent behavior, each was invited on the basis of comity to pull back if application of the balancing factors seemed to indicate that the other state had greater interests or contacts.

The new Restatement, however, intended to go beyond comity to provide that a state lacks jurisdiction to prescribe or apply its law unreasonably in the international arena. Reporters' Note 10 to section 403²² states,

In contrast to prior § 40, reasonableness in all the relevant circumstances is understood here not as a basis for requiring that states consider moderating their enforcement of laws which they are authorized to prescribe, but as an essential element in determining whether, as a matter of international law, the state has jurisdiction to prescribe.

The critics of section 403 observed that, however laudable the objective of reducing conflicts between legal systems might be, nobody before the reporters had urged that reasonableness imposes a limitation on a state's assertion of jurisdiction. These critics also observed that it would be difficult to predict the outcome when the balancing factors are applied to any but the most obvious and extreme case, simply because there are so many factors to consider and because most of them provide room for highly subjective application.

In the end, however, Prof. Lowenfeld's balancing concepts were retained virtually intact, and the reporters asserted that section 403 was an accurate expression of both U.S. and international law:

The principle of reasonableness as a limitation on jurisdiction has received wide acceptance. We have strengthened the support for our position that this is not only domestic U.S. foreign relations law but has emerged as international law.²³

20. *Id.*

21. Section 40 listed the following factors (intended to be illustrative, not exhaustive):

- (a) vital national interests of each of the states,
- (b) the extent and nature of the hardship that inconsistent enforcement actions would impose upon the person,
- (c) nationality of the person, and
- (d) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule presented by that state.

22. Tentative Draft No. 7, at 14.

23. Note to members of the ALI accompanying Tentative Draft No. 6, at 3.

Critics of section 403 made more headway in their effort to restore to the Restatement something resembling comity. In place of section 403(3) and (4) the reporters substituted the following:

(3) When more than one state has a reasonable basis for exercising jurisdiction over a person or activity, but the prescriptions by two or more states are in conflict, each state has an obligation to evaluate its own as well as the other state's interest in exercising jurisdiction in light of all the relevant factors, including those set out in Subsection (2), and should defer to the other state if that state's interest is clearly greater.²⁴

The reporters now recognize that "in the current state of the law failure to defer is not a violation of international law."²⁵

4. *Jurisdiction with Respect to Activities of Foreign Branches and Subsidiaries (Section 414)*

The reporters originally affirmed, subject to the principle of reasonableness in section 403, jurisdiction of the United States over foreign branches of U.S. companies and foreign subsidiaries substantially owned or controlled by U.S. nationals. The black letter explained that section 403 would support the application of U.S. law (a) as a part of a program of economic regulation applicable to U.S. nationals and (b) in furtherance of a national interest which cannot effectively be carried out without applying the law or regulation in question also to foreign subsidiaries.²⁶

The principle expressed in section 403 was said to prevent the application of U.S. law when it would require conduct prohibited, or prohibit conduct required, by the law of the state where the branch or subsidiary is organized or doing business, which resolves the Siberian pipeline dilemma. Section 403 also was applied to prevent exercise of U.S. jurisdiction to regulate conduct that is predominantly local in character.²⁷

The commentary under section 414 as originally proposed indicated that in cases where U.S. jurisdiction cannot be applied directly to a foreign subsidiary it also cannot be applied indirectly by mandate addressed to the U.S. parent or its officers on the basis of their U.S. nationality. The commentary also placed primary jurisdiction over foreign branches and subsidiaries with the host state, and enjoined the U.S. to use "sparingly" its jurisdiction based on section 414.²⁸

The debate in the ALI on section 414 reflected a consensus that home state jurisdiction over foreign branches and (especially) subsidiaries is

24. Tentative Draft No. 7, at 2.

25. Note to members of the ALI accompanying Tentative Draft No. 6, at 3.

26. Tentative Draft No. 2, at 147-8.

27. *Id.* at 148.

28. *Id.* at 148-9.

generally a bad idea, in view of the host country's clearly superior interests, and that home states should not be able to capture that jurisdiction simply by declaring that it is in their national interest to do so. The reporters accommodated this consensus in the following ways:²⁹

1. Section 414, formerly descriptive of United States jurisdiction over foreign branches and subsidiaries of its nationals, was generalized to cover claims of jurisdiction by all home states. After all, hadn't the Canadians asserted jurisdiction over U.S. parent companies under their former Foreign Investment Review Act?

2. The black letter now provides that a state may exercise *limited* jurisdiction with respect to foreign branches, subject both to the reasonableness principle in section 403 and to the defense of foreign government compulsion in section 436. It also provides that the home state may not ordinarily exercise jurisdiction over foreign subsidiaries, but that subject to sections 403 and 436 it may not be unreasonable for the home state to exercise *limited* jurisdiction *by direction to the parent* in respect of uniform accounting, disclosure to investors, consolidated tax returns and suchlike or *by direction to the parent or the subsidiary* in "other exceptional cases, depending on all relevant factors" including:

(i) whether the regulation is essential to implementation of a program to further a major, urgent national interest of the state exercising jurisdiction;

(ii) whether the national program of which the regulation is a part cannot be carried out effectively unless it is applied also to foreign subsidiaries;

(iii) whether the regulation is in potential or actual conflict with the law or policy of the state where the subsidiary is established.

The black letter also provides that the burden of establishing reasonableness is heavier when the direction is issued to the foreign subsidiary rather than to the parent corporation.

5. *Jurisdiction to Regulate Activities Related to Securities:* *Law of the United States (Section 416)*

One of the helpful features of part IV is the illustration of the principles of section 402 and 403 in various areas of U.S. substantive law: taxation, antitrust and securities. The reporters' conclusions on taxation (sections 411-413) elicited little comment; their presentation on antitrust (section 415) earned them warm support from the ABA's Section of Antitrust Law and other antitrust commentators, who were delighted to see the principles of *Timberlane*³⁰ and *Mannington Mills*³¹ embodied in black letter.

29. Tentative Draft No. 6, at 229-30.

30. *Timberlane Lumber Co. v. Bank of America NT&SA*, 549 F.2d 597 (9th Cir. 1976).

31. *Mannington Mills, Inc. v. Congoleum Corp.*, 595 F.2d 1287 (3d Cir. 1979).

The situation was otherwise in respect of securities law (section 416). Prof. Lowenfeld had expressed his dismay in the Hague Lectures at the ease with which jurisdiction of the U.S. securities laws could be established in transnational litigation by demonstrating that the defendant had made use of the mails, a national securities exchange or other means or instrumentalities of interstate commerce ("jurisdictional hooks," he called them). Prof. Lowenfeld thought that he detected in some of the more recent transnational securities cases a rule of reasonableness, and he sought to accelerate that trend by providing in section 416(2) that in regard to securities transactions not on a securities market in the United States but where (a) securities of the same issuer are traded in a U.S. securities market, (b) representations are made or negotiations are conducted in the U.S., or (c) the party sought to be regulated is a U.S. national or resident or the party sought to be protected is a U.S. resident, then the authority of the United States to exercise jurisdiction depends on whether it is reasonable under section 403.³² The commentary stated that absence of the linkages described above "gives strong indication of lack of jurisdiction to apply United States law."³³

As might be expected, the general counsel of the Securities and Exchange Commission objected that adoption of the draft Restatement would seriously impair the Commission's enforcement efforts.³⁴ Further, it did not appear that extraterritorial application of U.S. securities laws had created resentment in foreign countries to nearly the same degree as extraterritoriality in respect of antitrust and discovery practices. As the reporters themselves say in their revised commentary to section 416, "challenges to exercise of U.S. jurisdiction under the securities laws [have] come only from private parties and not from foreign states, so that the need to weigh competing or conflicting state interests is less likely in this area. . . ."³⁵

The revised black letter generally confirms U.S. jurisdiction in the securities area where (a) a U.S. national or resident is a party or offeree, (b) a transaction is carried out or intended to be carried out in the United States, (c) conduct outside the United States has or is intended to have substantial effect in the United States, (d) conduct predominately in the United States relates to a securities transaction outside the United States, and (e) investment advice or solicitation of proxies or consents is carried out predominately in the United States.³⁶ This "basic" jurisdiction is not limited by the principles of reasonableness in section 403.

32. Tentative Draft No. 2, at 142-3.

33. *Id.* at 143.

34. See Goelzer *et al.*, Appendix A *infra*.

35. Tentative Draft No. 7, at 18.

36. *Id.* at 15-16.

6. *Requests for Disclosure and Foreign Government Compulsion:
Law of the United States (Section 437)*

Section 437 is the reporters' attempt to deal with the hostility of foreign states toward U.S. discovery practices, and with foreign blocking statutes that have emerged as an expression of that hostility. In the reporters' words, "No aspect of the extension of the American legal system beyond the territorial frontier of the United States has given rise to so much friction as the request for documents associated with investigation and litigation in the United States. Some fifteen states . . . [have] adopted legislation expressly designed to counter U.S. efforts to secure production of documents situated outside the United States. . . ." ³⁷

The reporters' technique for reducing tensions created by U.S. discovery practices, as set forth in the original version of section 437, ³⁸ was:

(a) To limit discovery to what is "relevant," in the sense of leading to the discovery of admissible evidence. Compare Rule 26(b)(1) of the Federal Rules of Civil Procedure, which allows discovery to extend to any non-privileged matter that is relevant to the case, even if the information sought would be inadmissible at trial, if it appears reasonably calculated to lead to the discovery of admissible evidence.

(b) To require a court order in every case before discovery may commence. Compare Rule 34 of the Federal Rules and rules governing investigations by governmental agencies, such as the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-14, and § 13 of the Federal Trade Improvements Act of 1980, 15 U.S.C. § 57b-1, which permit the private litigant or the agency to go forward with discovery without a court order.

There seemed to be within the ALI a general agreement that the reporters' proposals for dealing with the discovery problem made a lot of sense but dismay that the Restatement would propose a solution at variance with U.S. law. In the end, the reporters altered the black letter to accommodate investigations by governmental agencies, whose enabling statutes provided no means of applying for a court order, but otherwise adhered very closely to their original draft. ³⁹ The matter of conflicts with U.S. law was dealt with in Comment *a*:

Thus, except as authorized by a specific statute or rule of court . . . requests to produce documents or information located abroad should, as a matter of good practice, be issued as an order by the court, not merely in the form of a demand by a private party. General authorizations to litigants, as under Rule 34 of the Federal Rules of Civil Procedure, should not be construed to support departure from this practice. ⁴⁰

37. Tentative Draft No. 7, at 35.

38. Tentative Draft No. 3, at 12-14.

39. Tentative Draft No. 7, at 27-9.

40. *Id.* at 29.

The reporters have provided for sanctions—including findings of contempt, dismissal, default judgment and adverse findings of fact—against a party who fails to comply with a court order to produce information. If the party should claim that disclosure is prohibited by a blocking statute, the Restatement requires that a good faith effort be made to secure permission from the foreign authorities to make the information available. It provides that the sanctions of contempt, dismissal or default should not ordinarily be imposed except in cases of deliberate concealment or removal of information or of failure to make such a good faith effort. The Restatement further provides that “in appropriate cases” adverse findings of fact may be made against a party who fails to produce, even if that party has made a good faith effort to obtain permission from his government, where the effort was unsuccessful.⁴¹

There understandably was great concern about what the “appropriate cases” are. The Reporters have responded to that concern by explaining in Comment *f* that the adverse finding is not intended as a penalty but rather, “as a form of pressure to induce compliance with justified requests for information.”

Such a finding does not change the burden of proof; it is appropriate only if there is reason to believe that the information, if disclosed, would be adverse to the non-complying party, and if the court or agency is satisfied that the request was made in good faith, not in the hope that the opposing party’s noncompliance would enable the requesting party to establish a fact that it could not establish if all the information were available. Furthermore such a finding is normally made only after prior warning; where practicable, the finding should be made in a tentative form, subject to reopening if the information is produced by a given date.⁴²

7. *The Act of State Doctrine: Law of the United States (Section 469)*

The act of state doctrine stands between U.S. plaintiffs and their foreign adversaries, and accordingly many U.S. lawyers would like to see the doctrine weakened by exceptions or abandoned altogether. The reporters must have expected, therefore, that their initial treatment of the act of state doctrine would draw criticism.

One element of this criticism concerned the apparent extension of the doctrine in the black letter from the takings of property involved in the *Sabbatino* case⁴³ to other kinds of governmental action taken by a state within its own territory. The reporters have not retreated on this issue,

41. *Id.* at 27-9.

42. *Id.* at 33.

43. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964).

pointing out that *Underhill v. Hernandez*,⁴⁴ the original U.S. Supreme Court statement of the doctrine, did not involve a taking of property, and that a number of lower courts have applied the doctrine in non-property cases.⁴⁵

Another element, even more controversial, dealt with the so-called treaty exception to the doctrine. In *Sabbatino*, the Court stated that the doctrine was applicable “in the absence of a treaty or other unambiguous agreement regarding controlling legal principles.” Many lawyers believe that the quoted language means that the doctrine will not be applied where a treaty exists; the reporters believe that the Supreme Court meant to leave this an open question which might go either way.⁴⁶

The reporters’ principal concession to their critics was to revise the black letter so as to adhere somewhat more closely to the language of *Sabbatino*. Section 469(1) now reads:

In the absence of a treaty or other unambiguous agreement regarding controlling legal principles, courts in the United States will generally refrain from examining the validity of a taking by a foreign state of property within its own territory, or from sitting in judgment on other acts of a governmental character done by a foreign state within its own territory and applicable there.⁴⁷

8. *Economic Injury to Nationals of Other States (Section 712)*

The 1965 Restatement dealt with expropriation by requiring in black letter that just compensation be paid, and defined “just” in subsequent black letter sections to make it clear that compensation to be “just” had to be “prompt, adequate and effective.” This is the traditional formulation in which “prompt” means as soon as the process of fixing a value on the expropriated property is concluded, “adequate” means fair market value plus interest from the date of taking, and “effective” means payable in convertible currency without restriction as to repatriation.

The new Restatement seemed initially to represent a substantial retreat from that traditional view. The draft introduction observed that it was “difficult . . . to state in black or even gray letter what is the international law now as regards compensation for expropriated alien properties” because “the traditional law has been challenged by most of today’s states, but the United States a few others hold on to the

44. 168 U.S. 250 (1897).

45. Tentative Draft No. 7, at 52.

46. *Id.* at 54.

47. *Id.* at 51.

old view'⁴⁸ Section 712 of the draft retained the standard of just compensation, but the "prompt, adequate and effective" formulation was demoted from black letter, and the commentary raised the spectre that just compensation no longer had to be prompt, adequate and effective.⁴⁹

Critics of the new Restatement's treatment of expropriation came early and stayed late. They expressed the view that the reporters had rested their proposition on weaker sources of authority, such as U.N. resolutions and settlements in which U.S. nationals had accepted less than what they would have received under the prompt, adequate and effective formulation. They urged that the reporters give greater weight to developments which seemed to indicate that the traditional doctrine was alive and well, such as recently concluded bilateral treaties that affirm the doctrine and recent international arbitral decisions which apply it.

It would require more space than is available to your reviewer to trace all of the steps in the evolution of section 712 to its present form,⁵⁰ but essentially the reporters now intend that the final version will be a reaffirmation of the previous Restatement on the subject of expropriation. The prompt, adequate and effective concepts have been restored to black letter. While the black letter refers to some "exceptional circumstances" in which the prompt, adequate and effective formulation might not apply, these circumstances have been narrowly defined in the commentary in a manner that is calculated to satisfy all but the most orthodox defenders of the traditional doctrine.⁵¹

III. Final Approval

The ALI membership put its final blessing on this Restatement on May 14, 1986. The reporters were invested with the traditional authority to make minor clean-up changes, and we can expect final publication

48. Tentative Draft No. 1, at xvi and xviii.

49. Tentative Draft No. 3, at 193 *et seq.*

50. Tentative Draft No. 7, at 119-20.

51. The "exceptional circumstances" which would permit deviation from the standard of just compensation include takings of alien property during war or similar exigency and, perhaps, national programs of agricultural land reform. A departure from the standard on the ground of exceptional circumstances is unwarranted if (a) the property taken had been used in a business enterprise that was specifically authorized or encouraged by the state; (b) the property was an enterprise taken for operation as a going concern by the state; (c) the taking program did not apply equally to nationals of the taking state; or (d) the taking itself was otherwise wrongful because it was not for a public purpose or discriminatory. Tentative Draft No. 7, at 122-3.

early in 1987. Prof. Hazard presented Chief Reporter Henkin with a certificate of appreciation for the reporters' eight years of effort. Somebody in the ALI was marvelously inspired to have the certificate engrossed on a worthless (until then) stock certificate of the Barcelona Traction Company.⁵²

52. For the uninitiated, *Barcelona Traction Light and Power Co. Ltd. (Belgium v. Spain)*, [1970] I.C.J. Rep. 3 is a hefty (355-page) World Court decision that stands for the proposition that a corporation's state of incorporation, rather than the state in which most of its shareholders reside, has standing to bring proceedings against a third state which has injured the corporation.

APPENDIX A

Articles and Cases Citing to or Discussing the New *Restatement**

ARTICLES

- Bazyler, *Abolishing the Act of State Doctrine*, 134 U. PA. L. REV. 325 (1986)
- Bloom, *The Executive Claims Settlement Power: Constitutional Authority and Foreign Affairs Applications*, 85 COLUM. L. REV. 155 (1985)
- Brittenham, *Foreign Sovereign Immunity and Commercial Activity: A Conflicts Approach*, 83 COLUM. L. REV. 1440 (1983)
- Browne, *Extraterritorial Discovery: An Analysis Based on Good Faith*, 83 COLUM. L. REV. 1320 (1983)
- Charney, *Transnational Corporations and Developing Public International Law*, 1983 DUKE L. J. 748 (1983)
- Chessman, *On Treaties and Custom: A Commentary on the Draft Restatement*, 18 INT'L. LAW. 421 (1984)
- D'Amato, *The Concept of Human Rights in International Law*, 82 COLUM. L. REV. 110 (1982)
- Damrosch, Book Review, *Banning the Bomb: Law and Its Limits*, 86 COLUM. L. REV. 653 (1986) (reviewing A.S. MILLER and M. FEINRIDER, *NUCLEAR WEAPONS AND THE LAW*)
- Darm, *The Outward Limit of the Department of Interior's Authority Over Submerged Lands—The Effect of Customary International Law on the Outer Continental Shelf Lands Act*, 60 WASH. L. REV. 673 (1985)
- Ellis & Pisant, *The United States Treaties on Mutual Assistance in Criminal Matters: A Comparative Analysis*, 19 INT'L. LAW. 189 (1985)
- Frumkin, *The Act of State Doctrine and Foreign Sovereign Defaults on United States Bank Loans: A New Focus for a Muddled Doctrine*, 133 U. PA. L. REV. 469 (1985)

*The information contained herein was prepared by the editor and was obtained in part by using the following search on LEXIS on July 8, 1986: (Res or Restatement) w/20 Foreign Relation w/20 United States w/ 10 (Draft or Tent!) w/10 (1980 or 1981 or 1982 or 1983 or 1984 or 1985 or 1986) w/10 Rev!

- Goelzer, Stillman, Walter, Sullivan & Michael, *The Draft Restatement: A Critique from A Securities Regulation Perspective*, 19 INT'L. LAW, 431 (1985)
- Halberstram, *Sabbatino Resurrected: The Act of State Doctrine in the Revised Restatement of U.S. Foreign Relations Law*, 79 AM. J. INT'L L. 68 (1985).
- Henkin, *Current Developments*, 75 AM. J. INT'L. L. 987 (1981)
- Hickman, *Protecting Intellectual Property in Taiwan—Non-Recognized United States Corporations and Their Treaty Right of Access to Courts*, 60 WASH. L. REV. 117 (1984)
- Janis, *Equity and International Law: The Comment in the Tentative Draft*, 57 TUL. L. REV. 80 (1982)
- Kerwin, *The Role of the United Nations General Assembly Resolutions in Determining Principles of International Law in the United States Courts*, 1983 DUKE L. J. 876 (1983)
- Koh, Malcolm R. Wilkey: *Jurist and Scholar*, 19 INT'L LAW. 1289 (1985)
- Kresic, *The Inconvenient Forum and International Comity in Private Antitrust Actions*, 52 FORDHAM L. REV. 399 (1983)
- Lee, *Jurisdiction Over Foreign States for Acts of Their Instrumentalities: A Model for Attributing Liability*, 94 YALE L. J. 394 (1984)
- Leigh, *Judicial Decisions*, 76 AM. J. INT'L L. 855 (1982)
- Lobel, *The Limits of Constitutional Power, Conflicts Between Foreign Policy and International Law*, 71 VA. L. REV. 1071 (1985)
- Lutz, *On Developments and Trends in International Law: A Commentary*, 18 INT'L LAW. 161 (1984)
- Lutz, *This Issue*, 19 INT'L LAW. XV (1985)
- Maier, *Extraterritorial Jurisdiction at a Crossroads: An Intersection Between Public and Private International Law*, 76 AM. J. INT'L L. 280 (1982)
- Grabow, *The President's Foreign Economic Powers After Dames & Moore v. Regan: Legislation by Acquiescence*, 68 CORNELL L. REV. 68 (1982)
- McFadden, *A Selected Bibliography on Hazardous Activities Technology and the Law: Bhopal and Beyond*, 19 INT'L LAW. 1459 (1985)
- Note, *The Act of State Doctrine: Resolving Debt Situs Confusion*, 86 COLUM. L. REV. 1039 (1985)
- Note, *Exclusion of Ships from Non-Territorial Weapons Testing Zones*, 99 HARV. L. REV. 1040 (1986)
- Note, *The Laker Antitrust Litigation: The Jurisdictional "Rule of Reason" Applied to Transnational Injunctive Relief*, 71 CORNELL L. REV. 645 (1986)
- Note, *NEPA's Role in Protecting the World Environment*, 131 U. PA. L. REV. 353 (1982)
- Note, *Predictability and Comity: Toward Common Principles of Extraterritorial Jurisdiction*, 98 HARV. L. REV. 1310 (1985)
- Note, *The S.E.C.'s Waiver by Conduct Proposal: A Critical Appraisal*, 71 VA. L. REV. 1411 (1985)
- Note, *Strict Enforcement of Extraterritorial Discovery*, 38 STAN. L. REV. 841 (1986)
- Note, *The United States—Iran Accords and the Taking Clause of the Fifth Amendment*, 68 VA. L. REV. 1537 (1982)

- Robinson, *Compelling Discovery and Evidence in International Litigation*, 18 INT'L. LAW. 533 (1984)
- Rosenthal, *Jurisdictional Conflicts Between Sovereign Nations*, 19 INT'L. LAW. 487 (1985)
- Schachter, *In Defense of International Rules on the Use of Force*, 53 U. CHI. L. REV. 113 (1986)
- Scoble, *Enforcing the Customary International Law of Human Rights in Federal Court*, 74 CALIF. L. REV. 127 (1986)
- Sennett and Gavil, *Antitrust Jurisdiction, Extraterritorial Conduct and Interest Balancing*, 19 INT'L. LAW. 1185 (1985)
- Shenefield, *Thoughts on Extraterritorial Application of the United States Antitrust Laws*, 52 FORDHAM L. REV. 350 (1983)
- Small, *Enforcing International Human Rights Law in Federal Courts: The Alien Tort Statute and the Separation of Powers*, 74 GEO. L. J. 163 (1985)
- Sohn, *How To Attain Peace, Security and Justice*, 19 INT'L. LAW. 599 (1985)
- Lowenfeld, Book Review 83 MICH. L. REV. 1000 (1985) (reviewing H. STERN, JUDGMENT IN BERLIN, (1984))
- Surace-Smith, *United States Activity Outside of the Law of the Sea Convention: Deep Seabed Mining and Transit Passage*, 84 COLUM. L. REV. 1032 (1984)
- Trimble, *Foreign Policy Frustrated—Dames & Moore, Claims Court Jurisdiction and a New Raid on the Treasury*, 84 COLUM. L. REV. 317 (1984)
- Weisbaum, *Selected Readings on Foreign and International Law*, 19 INT'L. LAW. 1365 (1985)
- Wallace, *International Law and the Use of Force: Reflections on the Need for Reform*, 19 INT'L. LAW. 259 (1985)

CASES

- Banco National De Cuba v. Chase Manhattan, 658 F.2d 875 (2d Cir. 1981)
- Association De Reclamantes v. United Mexican States, 735 F.2d 1517 (D.C. Cir. 1984)
- Blanco v. United States, 755 F.2d 53 (2d Cir. 1985)
- Callejo v. Bancomer, S.A., 764 F.2d 1101 (5th Cir. 1985)
- Competex, S.A. v. Labow, 783 F.2d 333 (2d Cir. 1986)
- Feliciano v. Reliant Tool Co. Ltd., 691 F.2d 653 (3d Cir. 1982)
- Frolova v. Union of Soviet Socialist Republics 761 F.2d 370 (7th Cir. 1985)
- Garcia-Mir v. Meese, 788 F.2d 1466 (11th Cir. 1986)
- Garpeg Ltd. v. United States, 588 F. Supp. 1240 (S.D.N.Y. 1984)
- Gilson v. Republic of Ireland, 682 F. 2d 1022 (D.C. Cir. 1982)
- Lareau v. Manson, 507 F. Supp. 1177 (Conn. 1980)
- Mendaro v. World Bank, 717 F.2d 610 (D.C. Cir. 1983)
- Mitsui v. American Export Lines, 636 F. 2d 807 (2d Cir. 1981)
- Pfeiffer v. Wrigley Co., 755 F.2d 554 (7th Cir. 1985)
- Plessey Co. v. General Electric Co., 628 F. Supp. 477 (Del. 1986)

Rossi v. Brown, 642 F. 2d 553 (D.C. Cir. 1980)
Sanchez v. Banco Central de Nicaragua, 770 F. 2d 1385 (5th Cir. 1985)
Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984)
Transamerican Steamship Corp. v. Somali Democratic Republic Shipping Agency, 767 F. 2d 998 (D.C. Cir. 1985)
United States v. Bank of Nova Scotia, 691 F.2d 1384 (11th Cir. 1982)
United States v. Davis, 767 F.2d 1025 (2d Cir. 1985)
United States v. Doherty, 786 F.2d 491 (2d Cir. 1986)
United States v. Lumumba, 741 F.2d 12 (2d Cir. 1984)
United States v. Romano, 706 F.2d 370 (2d Cir. 1983)
United States v. Toyota, 569 F. Supp. 1158 (C.D. Calif. 1983)
United States v. Wright-Barker, No. 84-5846, Slip op. (3d Cir. Feb 14, 1986)
United States v. Zehe, 601 F. Supp. 196 (Mass. (1985)
Von Dardel v. Union of Soviet Socialist Republics, 623 F. Supp. 246 (D.C. 1985)
Vencedora Oceanica Navegacion, S.A. v. Compagnie Nationale Algerienne de Navigation, 730 F. 2d 195 (5th Cir. 1984)

APPENDIX B*
Restatement of Foreign Relations Law
(Revised)
Comprehensive
Table of Contents

Section

Foreword	
Introduction to Revised Restatement.....	
1. Foreign Relations Law of the United States	

PART I
INTERNATIONAL LAW
AND ITS RELATION TO UNITED STATES LAW

Chapter 1
International Law: Character and Sources

Introductory Note.....	
101. International Law Defined.....	
102. Sources of International Law.....	
103. Evidence of International Law	

Chapter 2
Status of International Law and Agreements in
United States Law

Introductory Note.....	
131. International Law and Agreements as Law of the United States.....	

* © 1986 by the American Law Institute. Reprinted with the permission of the American Law Institute.

Section

- 132. Determination and Interpretation of International Law: Law of the United States.....
- 133. International Law and Agreements in Courts in the United States.....
- 134. Interpretation of Federal Statute in Light of International Law or Agreement.....
- 135. Inconsistency Between International Law or Agreement and Domestic Law: Law of the United States

PART II

PERSONS IN INTERNATIONAL LAW

- Introductory Note.....

Chapter 1 States

- 201. State Defined
- Subchapter A. Recognition or Acceptance of States and Governments.....
 - 202. Recognition or Acceptance of States
 - 203. Recognition or Acceptance of Governments.....
 - 204. Authority as to Recognition and Diplomatic Relations: Law of the United States.....
 - 205. Effect of Non-Recognition: Law of the United States
- Subchapter B. Capacities, Rights and Duties of States
- 206. Capacities, Rights and Duties of States.....
- 207. Attribution of Conduct to States
- Subchapter C. Succession of States.....
 - 208. Succession of States
 - 209. State Succession: State Property and Contracts
 - 210. State Succession: International Agreements.....
- Subchapter D. States and Individual or Corporate Nationality
- 214. Nationality of Individuals
- 215. Nationality and Citizenship of Individuals: Law of the United States ..
- 216. Nationality of Corporations

Chapter 2

International Organizations

- Introductory Note.....
- 217. International Organization Defined
- 218. Membership in International Organizations
- 219. International Organizations: Capacities, Rights and Duties

Section

**PART III
INTERNATIONAL AGREEMENTS**

Introductory Note.....

Chapter 1

International Agreements: Definition, Nature and Scope

- 301. Definitions
- 302. Scope of International Agreements: Law of the United States.....
- 303. Authority to Make International Agreements: Law of the United States.....

Chapter 2

The Making of International Agreements

- 311. Capacity and Authority to Conclude International Agreements.....
- 312. Entry into Force of International Agreements
- 313. Reservations
- 314. Reservations and Understandings: Law of the United States

Chapter 3

Effect and Interpretation of International Agreements

- 321. Binding Force of Agreement
- 322. Scope of Agreement: Time and Territory.....
- 323. Successive International Agreements.....
- 324. Effect of International Agreements for Non-Party States
- 325. Interpretation of International Agreements
- 326. Authority to Interpret International Agreements: Law of the United States.....

Chapter 4

Invalidity and Termination of International Agreements

- 331. Invalidity of Consent to International Agreement.....
- 332. Termination or Denunciation of International Agreement.....
- 333. Suspension of Operation of International Agreement
- 334. Amendment or Modification of International Agreement
- 335. Material Breach of International Agreement.....
- 336. Fundamental Change of Circumstances
- 337. Procedure with Respect to Invalidity, Termination, or Suspension of Agreement
- 338. Consequences of Invalidity, Termination, or Suspension of Agreement
- 339. Authority to Modify, Suspend, or Terminate International Agreement: Law of the United States

Section

**PART IV
JURISDICTION AND JUDGMENTS**

Introductory Note.....	
401. Categories of Jurisdiction	

**Chapter 1
Jurisdiction to Prescribe**

Subchapter A. Principles of Jurisdiction to Prescribe.....	
Introductory Note.....	
402. Bases of Jurisdiction to Prescribe	
403. Limitations on Exercise of Jurisdiction to Prescribe.....	
404. Universal Jurisdiction to Define and Punish Selected Offenses	
Subchapter B. Principles of Jurisdiction Applied	

Introductory Note.....	
411. Jurisdiction to Tax: The Basic Rule	
412. Jurisdiction to Tax: Basic Rule Applied	
413. Limitations on Double Taxation: Law of the United States.....	
414. [418] Jurisdiction with Respect to Activities of Foreign Branches and Subsidiaries.....	
415. Jurisdiction to Apply Antitrust Laws: Law of the United States.....	
416. Jurisdiction to Regulate Activities Related to Securities: Law of the United States	

**Chapter 2
Jurisdiction to Adjudicate**

Introductory Note.....	
421. Jurisdiction to Adjudicate	
422. Jurisdiction to Adjudicate in Criminal Cases: Law of the United States.....	
423. Jurisdiction to Adjudicate in Aid of Universal and Other Non-Territorial Crimes.....	

**Chapter 3
Jurisdiction to Enforce**

Introductory Note.....	
431. Jurisdiction to Enforce	
432. External Measures in Aid of Enforcement of Criminal Law	
433. External Measures in Aid of Enforcement of Criminal Law: Law of the United States	

**Chapter 4
Conflicts of Jurisdiction**

Introductory Note.....	
436. Foreign Government Compulsion	

Section

437. Discovery and Foreign Government Compulsion: Law of the United States.....

Chapter 5 Immunity From Jurisdiction

- Subchapter A. Immunity of Foreign States from Jurisdiction to Prescribe.....
 Introductory Note.....
 441. Immunity of Foreign States from Jurisdiction to Prescribe.....
 442. Immunity of Foreign States from Jurisdiction to Tax
- Subchapter B. Immunity of Foreign States from Jurisdiction to Adjudicate.....
 Introductory Note.....
 451. Immunity of Foreign States from Jurisdiction to Adjudicate: The Basic Rule
452. Claims against States and State Instrumentalities.....
 453. Claims Arising out of Commercial Activity.....
 454. Claims in Tort.....
 455. Claims Concerning Property
456. Waivers of Immunity.....
 457. Commencement and Venue of Action against Foreign State or Instrumentality: Law of the United States
458. Actions in Courts of States of the United States
459. Default Judgments against Foreign States: Law of the United States ..
460. Execution and Other Means of Enforcement of Judgments against Foreign States: Law of the United States.....
- Subchapter C. Immunity of Foreign States from Jurisdiction to Enforce
461. Immunity of Foreign States from Non-Judicial Enforcement.....
- Subchapter D. Diplomatic and Consular Immunities
- Introductory Note.....
462. Immunity of Diplomatic Agents of Other States.....
 463. Immunity of Consular Personnel of Other States
464. Immunity of Diplomatic or Consular Premises, Archives, Documents and Communications.....
- Subchapter E. Immunity of International Organizations.....
 Introductory Note.....
465. Immunity of International Organizations
466. Immunity of Premises, Archives, Documents and Communications of International Organizations
467. Immunity of Officials of International Organizations.....
468. Immunity of Permanent Representatives to International Organizations.....

Chapter 6 The Act of State Doctrine

469. The Act of State Doctrine: Law of the United States.....
 470. The Act of State Doctrine: Statutory Exception.....

Section**Chapter 7****International Cooperation in Adjudication and Enforcement**

Subchapter A. Judicial Assistance	
Introductory Note.....	
471. Service of Process in Foreign State	
472. Service of Process in Foreign State: Law of the United States	
473. Obtaining Evidence in Foreign State	
474. Obtaining Evidence in or for Use in Foreign State: Law of the United States	
Subchapter B. Extradition	
Introductory Note.....	
476. Extradition Between States: The Basic Rule	
477. Grounds for Refusal of Extradition.....	
478. Doctrine of Specialty.....	
479. International Extradition Procedure: Law of the United States	

Chapter 8**Foreign Judgments and Awards**

Introductory Note.....	
Subchapter A. Foreign Judgments: Law of the United States	
481. Recognition and Enforcement of Foreign Judgments	
482. Grounds for Non-Recognition of Foreign Judgments.....	
483. Recognition and Enforcement of Tax and Penal Judgments.....	
484. Recognition of Foreign Divorce Decrees	
485. Recognition and Enforcement of Foreign Child Custody Orders	
486. Recognition and Enforcement of Foreign Support Orders	
Subchapter B. Foreign Arbitral Agreements and Awards	
487. Recognition and Enforcement of Foreign Arbitral Agreements and Awards	
488. Grounds for Non-Recognition of Foreign Arbitral Awards	

PART V**THE LAW OF THE SEA**

Introductory Note.....	
------------------------	--

Chapter 1**Ships**

501. Nationality of Ships	
502. Rights and Duties of Flag State	

Chapter 2**Rights and Duties of Coastal and Port States**

511. Coastal State Authority in Zones of Adjacent Sea.....	
512. Coastal State Sovereignty over Territorial Sea.....	

Section

- 513. Passage Through Territorial Sea, Straits, and Archipelagic Waters.....
- 514. Exclusive Economic Zone
- 515. Continental Shelf.....
- 516. Delimitation of Territorial Sea.....
- 517. Delimitation of Exclusive Economic Zone and Continental Shelf.....

Chapter 3
High Seas

- 521. Freedom of the High Seas
- 522. Enforcement Jurisdiction over Foreign Ships on High Seas.....
- 523. Exploitation of Mineral Resources of Deep Sea-Bed

PART VI
THE LAW OF THE ENVIRONMENT

- Introductory Note.....
- 601. State obligations with Respect to the Environment of Other States and
the Common Environment
- 602. Remedies for Violation of Environment Obligations
- 603. Responsibility for Marine Pollution.....
- 604. Remedies for Marine Pollution

PART VII
PROTECTION OF PERSONS (NATURAL AND JURIDICAL)

- Introductory Note.....

Chapter 1
International Law of Human Rights

- 701. Obligation to Respect Human Rights.....
- 702. Customary International Law of Human Rights
- 703. Remedies for Violations of Human Rights Obligations.....

Chapter 2
Injury to Nationals of Other States

- 711. State Responsibility for Injury to Nationals of Other States
- 712. Economic Injury to Nationals of Other States.....
- 713. Remedies for Injury to Nationals of Other States.....

Section

Chapter 3

Individual Rights in Foreign Relations: Law of the United States

- 721. Applicability of Constitutional Safeguards.....
- 722. Rights of Aliens.....

PART VIII

Selected Law of International Economic Relations

- Introductory Note.....

Chapter 1

Law of International Trade

- Introductory Note.....
- 801. Definitions.....
- 802. Most-Favored-Nation Treatment as to Imports.....
- 803. Commitment to Tariffs Bound by International Agreement.....
- 804. Quantitative Restrictions on Imports.....
- 805. Indirect Barriers to Imports.....
- 806. Subsidies and Countervailing Duties.....
- 807. Dumping and Anti-Dumping Duties.....
- 808. Emergency Action to Protect Domestic Producers.....
- 809. Customs Unions and Free Trade Areas.....
- 810. Developing States.....
- 811. Commodity Agreements.....
- 812. Export Controls.....

Chapter 2

International Monetary Law

- Introductory Note.....
- 821. Obligations of Member States of the International Monetary Fund....
- 822. Exchange Controls and Exchange Contracts in Courts of Member States...
- 823. Obligations in Foreign Currency: Law of the United States.....

PART IX

REMEDIES FOR VIOLATIONS OF INTERNATIONAL LAW

- Introductory Note.....
- 901. Obligations Resulting from Breach of International Law.....
- 902. Inter-State Claims and Remedies.....
- 903. International Court of Justice.....
- 904. Inter-State Arbitration.....
- 905. Unilateral Remedies.....
- 906. Private Remedies for Violations of International Law.....
- 907. Private Remedies for Violations of International Law: Law of the United States.....