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**DIGEST OF  
UNITED STATES PRACTICE  
IN INTERNATIONAL LAW**

2019

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## Introduction

I am pleased to introduce the 2019 edition of the *Digest of United States Practice in International Law*. This volume reflects the work of the Office of the Legal Adviser during calendar year 2019. The *Digest* also covers some international legal developments within the purview of other departments and agencies of the United States, such as the U.S. Trade Representative, the Department of the Treasury, the Department of Justice, and others with whom the Office of the Legal Adviser collaborates. The State Department publishes the online *Digest* to make U.S. views on international law quickly and readily accessible to our counterparts in other governments, and to international organizations, scholars, students, and other users, both within the United States and around the world.

This volume features explanations of U.S. international legal views in 2019 delivered by representatives of the U.S. government. The Secretary of State designated the Islamic Revolutionary Guard Corps (“IRGC”), including its Qods Force, as a foreign terrorist organization (“FTO”). The United States formally commented on three projects of the International Law Commission (“ILC”): the draft Guide to Provisional Application of Treaties; the draft Articles on Crimes Against Humanity; and the draft Guidelines on Protection of the Atmosphere. Other U.S. government attorneys and I also delivered remarks on the numerous topics covered in the report of the ILC on the work of its 71<sup>st</sup> Session. The United States joined a group of 23 countries at the UN Committee on the Elimination of Racial Discrimination (“CERD”) in condemning the Chinese government’s targeting of ethnic Uighurs and other human rights violations and abuses in the Xinjiang Uighur Autonomous Region, repeating that condemnation in other fora, including the International Labor Organization (“ILO”), the UN General Assembly and Third Committee, as well as through the imposition of U.S. visa restrictions and in the State Department’s annual report to Congress on international religious freedom. The State Department reiterated U.S. support for the territorial integrity of Ukraine and again condemned Russia’s purported annexation of Crimea in a 2019 “Crimea is Ukraine” statement. The State Department issued statements of concern regarding Turkey’s attempts to conduct drilling operations in the waters off Cyprus and China’s coercive behavior against other countries’ oil and gas development activities in the South China Sea. Secretary Pompeo announced the administration’s view that the establishment of Israeli civilian settlements in the West Bank is not per se inconsistent with international law. And after participating and providing a paper on its practices at the Vienna Conference on Protecting Civilians in Urban Warfare, the United States also joined Belgium, France, Germany, and the United Kingdom in producing a technical compilation of practical measures to strengthen the protection of civilians during military operations in armed conflict for the follow-up meetings in Geneva in November.

There were numerous developments in 2019 relating to U.S. international agreements, treaties and other arrangements. El Salvador, Guatemala, and Honduras signed Asylum Cooperative Agreements (“ACAs”) with the United States. The American Institute in Taiwan (“AIT”) and the Taipei Economic and Cultural Representative Office in the United States (“TECRO”) signed a Memorandum of Understanding (“MOU”) Regarding Certain Consular Functions. The United States and Croatia signed bilateral extradition and mutual legal assistance agreements. The United States concluded its first agreement under the Clarifying Lawful Overseas Use of Data Act (“CLOUD Act”) with the United Kingdom. Protocols to tax treaties with Spain, Switzerland, Japan, and Luxembourg received the U.S. Senate’s advice and consent to ratification, as did the Protocol on the Accession of North Macedonia to NATO. In 2019, the United States negotiated new air transport agreements with The Bahamas and Belarus; and negotiated and signed or initialed amendments to the air transport agreements with Suriname, Argentina, Japan, and Kenya. The three parties to the U.S.-Mexico-Canada Agreement (“USMCA”) concluded their negotiations to replace the North American Free Trade Agreement (“NAFTA”), with the U.S. House of Representatives approving the USMCA in late 2019 (and the Senate in early 2020). The United States ratified the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean and the United States and Canada continued negotiations in 2019 to modernize the Columbia River Treaty regime. The United States entered into six agreements pursuant to the 1970 UNESCO Cultural Property Convention. The United States signed the Singapore Convention on Mediation, ratified the Marrakesh Treaty to Facilitate Access to Public Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, and became the second State Party to the UN Convention on the Assignment of Receivables in International Trade. On October 17, 2019, in a joint U.S.-Turkish statement, Turkey announced a ceasefire in Northeast Syria after a week-long offensive. The United States suspended its obligations under the INF Treaty and subsequently withdrew from the Treaty (effective August 2, 2019) and submitted notification to the UN of its withdrawal from the Paris agreement on climate change (effective November 4, 2020). The President withdrew the Arms Trade Treaty from Senate consideration and the Secretary of State notified the UN that the United States did not intend to join. The United States revoked its denunciation of the constitution of the Universal Postal Union (“UPU”), remaining a UPU member after an extraordinary congress of the UPU approved reforms.

In the area of diplomatic relations, the United States recognized Juan Guaidó as the interim president of Venezuela, and joined Venezuela and other countries in invoking the Inter-American Treaty of Reciprocal Assistance (“TIAR” or “Rio Treaty”). The United States also required the departure of two diplomats from Cuba’s mission to the UN.

The U.S. government participated in litigation in U.S. courts in 2019 involving issues related to foreign policy and international law. The Executive Branch continued to defend its discretion to regulate and restrict the entry of aliens into the United States in challenges brought after the 2018 Supreme Court decision in *Trump v. Hawaii*. The Department of Homeland Security (“DHS”) announced compliance with preliminary injunctions against termination of temporary protected status (“TPS”) for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. The United States government successfully opposed certiorari in *Alimanestianu v. United States*, in which petitioners

argued that a global claims settlement agreement with Libya espousing their claims and compensating them for their injuries constituted a taking of their rights to seek damages through litigation. The Supreme Court also denied certiorari after the U.S. filed an opposition brief in *Argentine Republic v. Petersen Energia Inversora*, a case in which Argentina was found by the lower courts to lack immunity under the Foreign Sovereign Immunities Act (“FSIA”) based on commercial activities with regard to petroleum contracts. The Supreme Court also denied cert in *de Csepel v. Republic of Hungary*, a case concerning the scope of the expropriation exception to the FSIA in the context of an art collection taken during the Holocaust era (again, aligning with the U.S. amicus brief recommending the petition be denied and affirming that the sovereign—Hungary in this case—was immune). The U.S. brief in the Supreme Court in *Opati v. Sudan*, a case arising out of the 1998 bombings by al-Qaeda at the U.S. Embassies in Kenya and Tanzania, argued that plaintiffs suing foreign state sponsors of terrorism under the terrorism exception may recover punitive damages for conduct pre-dating amendments to the FSIA authorizing such suits. The Supreme Court issued its decision in *Jam v. IFC* (the U.S. brief was filed in 2018), holding that the International Organizations Immunities Act (“IOIA”) grants international organizations the same immunity from suit as foreign governments now enjoy under the FSIA.

The United States government also participated in a variety of international court proceedings and arbitrations in 2019. The United States made non-disputing party submissions in dispute settlement proceedings in cases in 2019 under NAFTA, the U.S.-Korea Free Trade Agreement, the U.S.-Panama Trade Promotion Agreement (“TPA”), and the U.S.-Peru TPA. In June 2019, the Iran-U.S. Claims Tribunal concluded the series of hearings on Case B/1, which began in 2018, and relate to Iran’s former participation in the U.S. Foreign Military Sales program. Activity at the International Court of Justice (“ICJ”) involving the United States continued in 2019, with the ICJ issuing a preliminary ruling in *Certain Iranian Assets* (rejecting many of Iran’s claims); and issuing an advisory opinion (contrary to U.S. submissions) regarding the United Kingdom’s administration of the British Indian Ocean Territory (“BIOT”).

The *Digest* discusses other forms of U.S. participation in international organizations, institutions, and initiatives. In addition to activity described above at the UN, the ICJ, and before international tribunals, Secretary Pompeo and other State Department officials addressed the Organization of American States (“OAS”) on restoring democracy and respect for human rights in Venezuela and Nicaragua. And the United States participated at the OAS Inter-American Commission on Human Rights through written submissions and participation in a number of hearings. The U.S. Mission to the UN transmitted to the president of the Security Council a letter informing the Council of an action taken in self-defense, resulting in the destruction of at least one Iranian unmanned aerial system approaching a U.S. ship in the Strait of Hormuz on July 18, 2019. The United States led the successful effort at the Organization for the Prohibition of Chemical Weapons (“OPCW”) to add novichoks to the Chemical Weapons Convention’s Annex on Chemicals so they are subject to rigorous verification, in response to the Russian Federation’s use of a novichok nerve agent in an assassination attempt in the United Kingdom in 2018.

Many attorneys in the Office of the Legal Adviser collaborate in the annual effort to compile the *Digest*. For the 2019 volume, attorneys whose early and voluntary

contributions to the *Digest* were particularly significant include Anna Cavnar, Michael Coffee, Sharla Draemel, Jeremy Freeman, Joshua Gardner, Peter Gutherie, Monica Jacobsen, Mahvish Madad, Jennifer Marcovitz, Aaron Marcus, Semra Mesulam, Lorie Nierenberg, John Padilla, Lana Vahab, Niels Von Deuten, Amanda Wall, Thomas Weatherall, Jeremy Weinberg, Alison Welcher, and Vanessa Yorke. Sean Elliott at the Foreign Claims Settlement Commission also once again provided valuable input. I express very special thanks to Law Librarian Camille Majors and Office of the Legal Adviser interns Christine Hulsizer and Kevan Christensen for ensuring the accuracy of the *Digest*, and to Jerry Drake and Nicholas Stampone for their expertise in formatting the *Digest* for final publication. Finally, I thank CarrieLyn Guymon for her continuing, outstanding work as editor of the *Digest*.

*Marik String*  
*Acting Legal Adviser*  
*Department of State*

## Note from the Editor

The official version of the *Digest of United States Practice in International Law* for calendar year 2019 is published exclusively online on the State Department's website. I would like to thank my colleagues in the Office of the Legal Adviser and those in other offices and departments in the U.S. government who make this cooperative venture possible and aided in the release of this year's *Digest*.

The 2019 volume follows the general organization and approach of past volumes. We rely on the texts of relevant original source documents introduced by relatively brief explanatory commentary to provide context. Introductions (in Calibri font) prepared by the editor are distinguishable from excerpts (in Times Roman font), which come from the original sources. Some of the litigation-related entries do not include excerpts from the court opinions because most U.S. federal courts now post their opinions on their websites. In excerpted material, four asterisks are used to indicate deleted paragraphs, and ellipses are used to indicate deleted text within paragraphs. Bracketed insertions indicate editorial clarification or correction to the original text.

Entries in each annual *Digest* pertain to material from the relevant year, although some updates (through May 2020) are provided in footnotes. For example, we note the release of U.S. Supreme Court and other court decisions, as well as other noteworthy developments occurring during the first several months of 2020 where they relate to the discussion of developments in 2019.

Updates on most other 2020 developments are not provided, and as a general matter readers are advised to check for updates. This volume also continues the practice of providing cross-references to related entries within the volume and to prior volumes of the *Digest*.

As in previous volumes, our goal is to ensure that the full texts of documents excerpted in this volume are available to the reader to the extent possible. For many documents we have provided a specific internet citation in the text. We realize that internet citations are subject to change, but we have provided the best address available at the time of publication. Where documents are not readily accessible elsewhere, we have placed them on the State Department website, which was updated in 2019, at <https://www.state.gov/digest-of-united-states-practice-in-international-law/>, where links to the documents are organized by the chapter in which they are referenced.

Other documents are available from multiple public sources, both in hard copy and from various online services. The United Nations Official Document System makes UN documents available to the public without charge at <https://www.un.org/en/sections/general/documents/index.html>. For UN-related information generally, the UN's home page at [www.un.org](http://www.un.org) also remains a valuable source. Legal texts of the World Trade Organization ("WTO") may be accessed through the WTO's website, at [https://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](https://www.wto.org/english/docs_e/legal_e/legal_e.htm).

The U.S. Government Printing Office ("GPO") provides electronic access to government publications, including the Federal Register and Code of Federal

Regulations; the Congressional Record and other congressional documents and reports; the U.S. Code, Public and Private Laws, and Statutes at Large; Public Papers of the President; and the Daily Compilation of Presidential Documents. GPO retired the Federal Digital System (“FDsys”) in December 2018 and replaced it with govinfo, available at <https://www.govinfo.gov>, as the online site for U.S. government materials.

On treaty issues, this site offers Senate Treaty Documents (for the President’s transmittal of treaties to the Senate for advice and consent, with related materials), available at <https://www.govinfo.gov/app/collection/CDOC>, and Senate Executive Reports (for the reports on treaties prepared by the Senate Committee on Foreign Relations), available at <https://www.govinfo.gov/app/collection/CRPT>. In addition, the Office of the Legal Adviser provides a wide range of current treaty information at <https://www.state.gov/bureaus-offices/treaty-affairs/> and the Library of Congress provides extensive treaty and other legislative resources at <https://www.congress.gov>.

The U.S. government’s official web portal is <https://www.usa.gov>, with links to government agencies and other sites. The State Department’s home page is <http://www.state.gov>. The website of the U.S. Mission to the UN is <https://usun.usmission.gov>.

While court opinions are most readily available through commercial online services and bound volumes, individual federal courts of appeals and many federal district courts now post opinions on their websites. The following list provides the website addresses where federal courts of appeals post opinions and unpublished dispositions or both:

- U.S. Court of Appeals for the District of Columbia Circuit:  
<https://www.cadc.uscourts.gov/bin/opinions/allopinions.asp>;
- U.S. Court of Appeals for the First Circuit:  
<http://media.ca1.uscourts.gov/opinions/>;
- U.S. Court of Appeals for the Second Circuit:  
<http://www.ca2.uscourts.gov/decisions.html>;
- U.S. Court of Appeals for the Third Circuit:  
<http://www.ca3.uscourts.gov/search-opinions>;
- U.S. Court of Appeals for the Fourth Circuit:  
<http://www.ca4.uscourts.gov/opinions/search-opinions>;
- U.S. Court of Appeals for the Fifth Circuit:  
<http://www.ca5.uscourts.gov/electronic-case-filing/case-information/current-opinions>;
- U.S. Court of Appeals for the Sixth Circuit:  
<https://www.ca6.uscourts.gov/opinions>;
- U.S. Court of Appeals for the Seventh Circuit:  
<http://media.ca7.uscourts.gov/opinion.html>;
- U.S. Court of Appeals for the Eighth Circuit:  
<https://www.ca8.uscourts.gov/all-opinions>;
- U.S. Court of Appeals for the Ninth Circuit:  
<https://www.ca9.uscourts.gov/opinions/>;
- U.S. Court of Appeals for the Tenth Circuit:  
<https://www.ca10.uscourts.gov/opinion/search>;
- U.S. Court of Appeals for the Eleventh Circuit:

<http://www.ca11.uscourts.gov/published-opinions;>  
U.S. Court of Appeals for the Federal Circuit:  
<http://www.cafc.uscourts.gov/opinions-orders/0/all>.

The official U.S. Supreme Court website is maintained at [www.supremecourtus.gov](http://www.supremecourtus.gov). The Office of the Solicitor General in the Department of Justice makes its briefs filed in the Supreme Court available at <https://www.justice.gov/osg>. Many federal district courts also post their opinions on their websites, and users can access these opinions by subscribing to the Public Access to Electronic Records (“PACER”) service. Other links to individual federal court websites are available at <http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>.

Selections of material in this volume were made based on judgments as to the significance of the issues, their possible relevance for future situations, and their likely interest to government lawyers, especially our foreign counterparts; scholars and other academics; and private practitioners.

As always, we welcome suggestions from those who use the *Digest*.

*CarrieLyn D. Guymon*