

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

2020

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## Introduction

The 2020 edition of the *Digest of United States Practice in International Law* reflects the ways in which the work of the Office of the Legal Adviser continued during the global coronavirus pandemic. As usual, the *Digest* also covers 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.

The impact of the pandemic is evident in nearly every area of legal practice and, accordingly, every chapter in this volume. Beginning in January 2020, a series of presidential proclamations, memoranda, and other measures suspended and restricted entry into the United States to prevent further spread of COVID-19. Many scheduled international meetings had to be postponed beyond 2020 if they could not be convened virtually, including, for example: the 26th session of the Conference of the Parties (“COP26”) to the UN Framework Convention on Climate Change (“UNFCCC”); the 109th Session of the International Labor Conference; the 10th Nonproliferation Treaty (“NPT”) Review Conference (“RevCon”); and sessions of the Bilateral Consultative Commission under the New START Treaty. United States diplomatic notes argued against onerous restrictions on the basis of reciprocity and asserted inviolability, among other privileges and immunities under the Vienna Convention on Diplomatic Relations (“VCDR”), on behalf of arriving and departing personnel when many governments around the world instituted quarantine and testing requirements as conditions of entry and exit. The United States provided a written statement explaining its position on the 73rd World Health Assembly (“WHA”) resolution on the COVID-19 response and made further statements emphasizing the importance of the International Health Regulations (“IHR”) and transparency and timely sharing of public health data and information. The United States supported UN Security Council resolution 2532, calling for an immediate cessation of hostilities in all situations on its agenda after the UN Secretary General’s call for a worldwide ceasefire to combat the pandemic.

Even in the unusual year that was 2020, representatives of the U.S. government continued to explain U.S. views and positions on critical topics, albeit sometimes virtually. Early in the year, the general counsel for the Department of Defense, Paul C. Ney, Jr., delivered remarks explaining certain legal considerations related to the U.S. air strike against Qassem Soleimani. The United States strongly objected to the ICC Appeals Chamber authorizing an investigation into activities of the Taliban and U.S. and Afghan personnel related to Afghanistan and also objected to the ICC prosecutor’s assertion of jurisdiction over Israel. The United States submitted its observations on the Human Rights Committee (“HRC”) draft General Comment No. 37 on Article 21 of the

International Covenant on Civil and Political Rights (“ICCPR”) regarding peaceful assembly (General Comment No. 37 was adopted by the HRC during its 129th session, held online). The United States submitted comments to the International Law Commission (“ILC”) regarding sea-level rise in relation to the Law of the Sea.

There were numerous developments in 2020 relating to U.S. international agreements, treaties and other arrangements. The United States and Sudan signed a claims settlement agreement in relation to the 1998 East Africa embassy bombings, the 2000 attack on the U.S.S. Cole, and the 2008 killing of a USAID employee. The U.S. government, the Bailiwick of Jersey, and the Government of the Federal Republic of Nigeria signed an agreement for the return of more than \$308 million in stolen assets to the Nigerian people. Seven countries signed bilateral instruments with the United States implementing the “Artemis Accords,” relating to international cooperation on and around the Moon, to include the “Gateway,” a habitable station in the Moon’s orbit. The President transmitted to the Senate for advice and consent to ratification several law enforcement-related instruments: instruments related to the U.S.-Croatia Extradition Treaty and the U.S.-Croatia Mutual Legal Assistance Treaty; the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (“Beijing Convention”); and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (the “Beijing Protocol”). Air transport agreements (“ATAs”) with The Bahamas, Qatar, and Bangladesh entered into force, and the United States negotiated ATAs with Kazakhstan and the United Kingdom and negotiated and signed or initialed amendments to the ATAs with Kenya and Japan. The United States took steps to protect the cultural property of Jordan, Yemen, Ecuador, El Salvador, and Chile by extending an existing memorandum of understanding (“MOU”) pursuant to the 1970 UNESCO Convention, or entering into a new MOU, or taking emergency measures. In 2020, the United States also signed the Mining, Agriculture, and Construction (“MAC”) Protocol to the Cape Town Convention under the auspices of UNIDROIT, which had been concluded in 2019. The United States provided notice of its decision to withdraw from the Treaty on Open Skies, and that withdrawal became effective on November 22, 2020.

In the area of diplomatic relations, the United States took several steps in response to the People’s Republic of China’s (“PRC’s”) actions to undermine Hong Kong’s high degree of autonomy as set forth under the Sino-British Joint Declaration, measures that included suspending or terminating several bilateral agreements; certifying to Congress that Hong Kong no longer warrants treatment under U.S. law in the same manner as it did before July 1, 1997; imposing visa restrictions on PRC officials believed to be responsible for, or complicit in, undermining Hong Kong’s high degree of autonomy or undermining human rights and fundamental freedoms in Hong Kong; and issuing and implementing Executive Order 13936 on Hong Kong Normalization, including imposing sanctions and amending the Export Administration Regulations (“EAR”). The United States witnessed the “Abraham Accords,” a series of agreements and declarations by several countries normalizing relations with Israel, including the United Arab Emirates, Bahrain, Morocco, and Sudan. President Trump issued a proclamation recognizing the entire Western Sahara territory as part of the Kingdom of Morocco.

The U.S. government participated in litigation in U.S. courts in 2020 involving issues related to foreign policy and international law. The Supreme Court issued its

opinion in *Monasky v. Tagleri*, unanimously holding that a child’s habitual residence under the Hague Abduction Convention is determined by a totality of the circumstances—a fact-bound inquiry unencumbered by rigid rules or presumptions. The United States filed briefs in *Nestlé/Cargill* on the issue of the liability of domestic corporations under the Alien Tort Statute for aiding-and-abetting international law violations (in these cases, by purchasing cocoa beans from farms that used forced labor of trafficked children and providing those farms with general technical assistance). The U.S. briefs in the Supreme Court in a pair of cases regarding World War II-era expropriations—*Hungary v. Simon* and *Germany v. Philip*—address issues of international comity and the expropriation exception in the Foreign Sovereign Immunities Act (“FSIA”). The Supreme Court held in *Opati v. Sudan* that plaintiffs in a federal cause of action under the terrorism exception to the FSIA may seek punitive damages for preenactment conduct.

The United States government also participated in a variety of international court proceedings and arbitrations in 2020. The United States participated in oral proceedings (by videolink) in the International Court of Justice on its preliminary objections filed in the *Alleged Violations of the 1955 Treaty of Amity* case. The Iran-U.S. Claims Tribunal issued a partial award in cases A15 (II:A), A/26 (IV) and B43 (Award No. 604-A15 (II:A)/A26 (IV)/B43-FT) with seven separate dissenting and concurring opinions. The United States made non-disputing party submissions in dispute settlement proceedings in cases in 2020 under NAFTA, the U.S.-Korea Free Trade Agreement (“FTA”), the U.S.-Panama Trade Promotion Agreement (“TPA”), the U.S.-Peru TPA, the U.S.-Colombia TPA, and the U.S.-Morocco FTA.

The *Digest* discusses other forms of U.S. participation in international organizations, institutions, and initiatives. The United States provided notice of its withdrawal from the World Health Organization (subsequently retracted on January 20, 2021). The United States participated in the Human Rights Council’s 36th session of the Universal Periodic Review (“UPR”) and submitted its national report, responding to recommendations during the 2015 UPR. U.S. engagement within the group of government experts (“GGE”) on emerging technologies in Lethal Autonomous Weapons Systems continued with multiple U.S. statements delivered in 2020.

Many attorneys in the Office of the Legal Adviser collaborate in the annual effort to compile the *Digest*. For the 2020 volume, attorneys whose contributions to the *Digest* were particularly significant include Leah Bellshaw, Jamie Briggs, Tiffany Derentz, Jane Farrington, Monica Jacobsen, Anna Melamud, Nathan Nagy, Lorie Nierenberg, and Thomas Weatherall. Sean Elliott at the Foreign Claims Settlement Commission also once again provided valuable input. I express very special thanks to our law librarian, Camille Majors, and her team at the Bunche Library and Office of the Legal Adviser intern Hannah James for ensuring the accuracy of the *Digest*, and to Rickita Grant for her expertise in formatting the *Digest* for final publication. Finally, I thank CarrieLyn Guymon for her continuing outstanding work as editor of the *Digest*.

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## Note from the Editor

The official version of the *Digest of United States Practice in International Law* for calendar year 2020 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 2020 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 lengthy excerpts (in Times New 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 2021) 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 2021 where they relate to the discussion of developments in 2020.

Updates on most other 2021 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, 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://documents.un.org/prod/ods.nsf/home.xsp>. For UN-related information generally, the UN's home page at <https://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 makes government materials available online at <https://www.govinfo.gov>.

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/internet/opinions.nsf/OpinionsByRDate?OpenView&count=100>;

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/search-opinions>;

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/supreme-court-briefs>. 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, <https://pacer.uscourts.gov/>. 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*