

## Preface: Entering Our Second Decade

With this volume we mark both an anniversary and an inaugural. It is the tenth volume of a journal that began publication in 1973 as *Yale Studies in World Public Order*; it is also the first to be published as the *Yale Journal of International Law*.

During its first decade, the *Journal* has been best known for the steady stream of contributions applying and elaborating the policy science approach known variously as the *Yale*, *New Haven*, or *World Public Order* school of international jurisprudence. The *Journal* has maintained, throughout these years, a close association with the principal exponents of that approach; its pages have contained many of their most influential essays, together with the work of their students and colleagues throughout the world.

As the intellectual compass of these scholars broadened, the *Journal* also extended its reach, becoming increasingly catholic in its choice of material. Inevitably, while retaining at its core the distinctive character bequeathed it by its founders, the *Journal* became in every sense a journal of international law. It is this development which the *Journal* formally acknowledges in adopting its new name.

That this evolution has not also meant a break with our traditions is amply demonstrated by the Special Feature presented in this volume. It began, as do so many good things at Yale, with the posting of a notice announcing a new seminar. Under the title, "The Incident as a Decision Unit in International Law," Professor Reisman set forth the following challenge:

An incident is an international dispute which has been appraised by relevant international actors for its lawfulness, but in a nonformal, nonjudicial setting, and which shapes or reinforces elite expectations about lawfulness. The Soviet destruction of KAL 007, the U.S. invasion of Grenada and the Israeli attack on the Iraqi reactor are examples of recent incidents. Because of the structure of the international political system, most international decision is found in incidents rather than cases and judgments. Yet paradoxically, there is no accepted method for recording incidents. The discipline of international law has adopted the notion of the national judgment as its basic if not exclusive epistemic unit; statements of courts are expanded by generative logic into a codex which is taken to be international law. As a result, much international jurisprudence is not congruent with the contemporary elite expectations that are reflected in practice. It serves neither descriptive nor predictive functions, and contributes little to the performance of indispensable legal tasks.

This seminar will attempt to develop a concise method for recording and appraising incidents in the hope that it can install a new genre in interna-

tional law. It will use the research techniques of contemporary historiography and political science in addition to the standard methods of international law. Each student, alone or in collaboration with another, will be responsible for researching a particular incident. Each will circulate a draft to the other seminar participants and explain and defend it in a session. It is planned that the better papers in the seminar will be collected in a volume and published.

Among those unable to resist this invitation were J.D. and advanced degree candidates in law, as well as several graduate students in international relations. Among them, not surprisingly, were several members of the *Journal's* editorial board. Their enthusiasm for the seminar quickly attracted the interest of fellow editors anxious to address, in some constructive way, the deficiencies of the international legal order, but less than enthusiastic about yet another set of fortieth anniversary essays on "Why the UN Doesn't Work."

The *Incidents* approach goes beyond such familiar inquiries to suggest that at least part of the problem may be epistemological, and not merely institutional. It is a realist's critique of the way we *think* about international law, which profoundly influences the viability of the legal and institutional arrangements that comprise the international system. Nor are Professor Reisman and his colleagues content merely to describe the problem. They propose a practical technique to facilitate the clearer thinking which is a precondition for effective solutions.

Like any educational endeavor, these papers seek to stimulate discussion. The *Journal* welcomes responses from our readers, and also encourages further exercises in the *Incidents* genre. To facilitate such projects, we will establish, with our next issue, an *Incidents* section as a regular feature of the *Journal*, rather like the case notes sometimes published by other legal periodicals. As the quantity and the methodological refinement of such studies increase, it is hoped that the genre will provide the international lawyer with a valuable new analytic and predictive tool.

The *Incidents* project is both a scholarly enterprise and an educational one. It is thus a fitting anniversary salute to a journal long committed to both, through the training of students in international law and the publication of their work.

The editors dedicate this issue, with pride and affection, to those whose attachment to the ideals of teaching and scholarship has been a source of such inspiration to the *Journal*: Myres S. McDougal, Harold D. Lasswell (1902-78), and W. Michael Reisman.

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