

INTERNATIONAL LAW AND JUSTICE IN THE 21ST CENTURY



The Enduring Contributions of

Thomas M. Franck

Foreword

As Thomas M. Franck's newly-arrived colleagues in international law at New York University School of Law, we have each been astonished as we have come to understand the magnitude of his contribution not only to international law, but to the Law School and the University, and to the lives of so many generations of students. His vast and profound body of scholarship; his intellectual leadership; his boundless energy for organizing events on timely and important subjects; his unique ability to bring together scholars, judges, international civil servants, diplomats, legal practitioners, and others to share ideas and experiences; his immense talents as a teacher; and, not least, his expansive personal generosity — all of these qualities, so remarkably encompassed within a single person, have immeasurably enriched our institution and our work. They have animated our understanding of the vocation of the international law academic, and we hope the work of NYU Law's new Institute for International Law and Justice will be a fitting tribute to Tom's inspiration. Together with Tom's distinguished senior colleagues, who will speak on these themes during the conference finale, we look forward to Tom's guiding presence and work among us for many years in the future.

Philip Alston, David Golove, Benedict Kingsbury, Mattias Kumm, Joseph Weiler, and Katrina Wyman





Thomas M. Franck

is a revered figure in international law.

In over 200 articles, 29 books, and many influential addresses, legal arguments and judgments, Professor Franck has made landmark contributions on issues as varied as decolonization and post-colonial legal systems, the international implications of national constitutions, mechanisms for third-party international adjudication, the use of force, structures for managing violence, legitimacy and fairness in the international legal order, and the conceptual foundations of personal identity and of nationalism. In Fall 2002, 42 years after joining the full-time faculty of New York University School of Law in 1960, Professor Franck joins the emeritus faculty, although he will continue to teach almost a full load. This conference celebrates his continuing intellectual contributions to the field of international law and his personal impact on so many people and institutions. To reflect Professor Franck's primary avocation as an NYU Law professor and teacher, several colleagues from around the world with whom he has recently co-taught will present scholarly papers intended to stimulate discussion of key ideas and themes in his work. The NYU Journal of International Law and Politics will publish these papers in versions revised in light of conference discussions. **We welcome you to this joyful celebration.**



Thomas M. Franck

Murry and Ida Becker Professor of Law Emeritus

Professor Franck graduated from the University of British Columbia with a B.A. in 1952 and an LL.B. in 1953. He received his LL.M. (1954) and S.J.D. (1959) from Harvard University, and in 1995 was awarded an LL.D. *honoris causa* by the University of British Columbia. Professor Franck was appointed to the faculty of New York University School of Law in 1960, and since 1962 has been the Murry and Ida Becker Professor of Law, becoming Emeritus in Fall 2002. The NYU Center for International Studies, which he founded in 1965 and has directed ever since, has trained many hundreds of students in international law and overseen a vast output of influential published research. In addition to his work as scholar and teacher, Professor Franck has served as counsel or adviser to the governments of Cyprus, El Salvador, Greece, Guatemala, Kenya, the Solomon Islands and many other states, as Research Director for UNITAR and in several other roles in the work of the United Nations, and from 1984 as a regular member of the U.S. State Department's Advisory Committee on International Law. He represented Chad before the International Court of Justice in the territorial dispute with Libya in 1992–1994, and appears for the applicant Bosnia-Herzegovina



in the ongoing case against Yugoslavia under the Genocide Convention. He currently serves as a Judge Ad Hoc of the International Court of Justice in the case between Indonesia and Malaysia concerning sovereignty over Pulau Ligitan and Pulau Sipadan. He was President of the American Society of International Law 1998–2000, Editor-in-Chief of the American Journal of International Law 1984–1993, Vice-President of the American Branch of the International Law Association 1973–1994, and continues to provide leadership and support to these and many other organizations. He is a member of the Institut de Droit International.

In 1994, Professor Franck was awarded the John E. Read Medal by the Canadian Council on International Law for distinction in the study and advancement of international law. He also has the extraordinary achievement of receiving the annual Certificate of Merit of the American Society of International Law for four different books: *United States Foreign Relations Law: Documents and Sources* (1981); *Nation Against Nation: What Happened to the U.N. Dream and What the U.S. Can Do About It* (1985); *Political Questions/Judicial Answers: Does the Rule of Law Apply to Foreign Affairs?* (1992) and *Fairness in International Law and Institutions* (1995). He was awarded the Christopher Medal for his book *Resignation in Protest: Political and Ethical Choices Between Loyalty to Team and Loyalty to Conscience in American Public Life* (1976). His book *Recourse to Force: State Action Against Threats and Armed Attacks* (2002) is launched at this conference in his honor.



A Note on the Center for International Studies

SHELLEY FENCHEL

There is much rich history in the Center for International Studies, which gives me pause to reflect on its many accomplishments, and to remember with great fondness the wonderful people who have been associated with it over the past 37 years. The Center for International Studies began operating at New York University in 1965, occupying the top two floors of a lovely brownstone on the north side of Washington Square Park, at 6 Washington Square North, with a staff consisting of Professor Thomas M. Franck as Director, myself as Administrative Assistant and one secretary. The Center quickly expanded to include an Associate and Assistant Director and a Board of Advisers, two of whom, James J. Baechle and Helmut N. Friedlaender, have remained actively involved.

Faculty members from various disciplines of the University as well as invited outside specialists spent a year or more



Fellows of the Center for International Studies at 6 Washington Square North, 1971. Professor Franck appears at top right and Mohamed ElBaradei, standing, at bottom right.



*Professor Franck with members of the U.N.
Trusteeship Council, 1970.*



at the Center conducting their own research. They served as Senior Fellows to department-sponsored Junior Fellows (from economics, politics, law, sociology, anthropology, government and international relations). Junior Fellows received funding while earning credit for their work at the Center. The category of Associate Junior Fellow was eventually established to permit Fellows an additional year in the program. The Center's projects and Fellows were funded by the University and the Center steadily increased its coffers by private donations from foundations, corporations and individuals.

As the years unfolded, so did the volume of work produced by the Center: projects increased and included, to mention but a very few: "Law and Order and Social Change"; "Developing Democracy in the Developing Nations: The Western Role in the Future of Democracy in the Developing Nations"; "The Johnson Doctrine and the Brezhnev Doctrine: Verbal Strategy and the National Interest";



Professor Franck and Shelley Fenchel with the 2001–2002 Junior Fellows of the Center for International Studies.



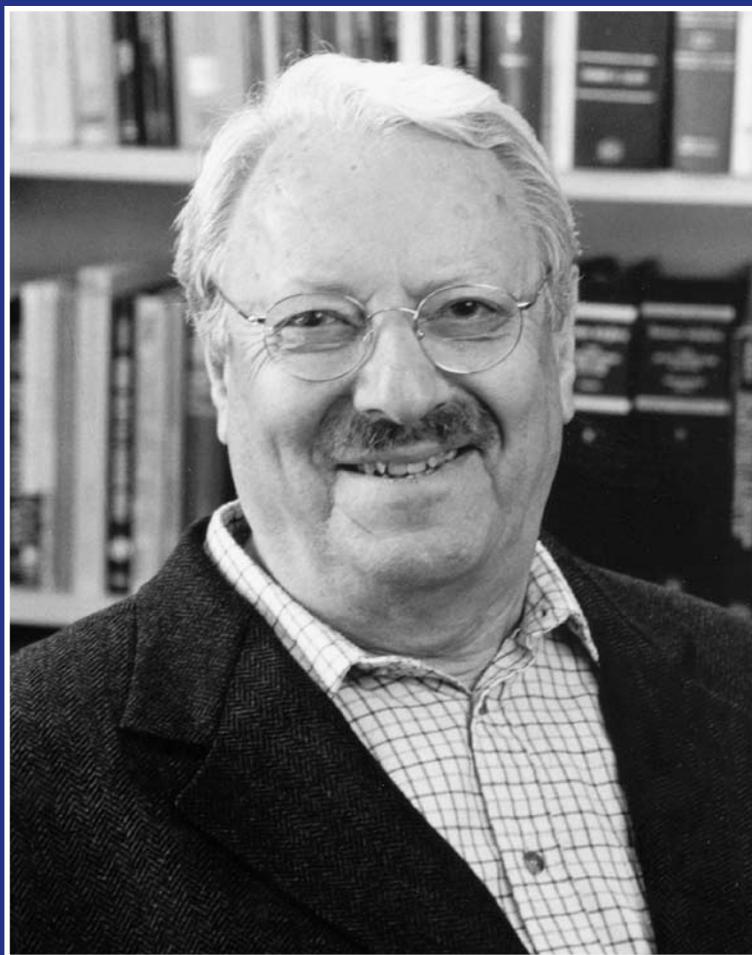
In 1974, due to the gradual ebb in funding for international studies, the Center moved from the north side of Washington Square Park to the south side — the Law School. This has been its home ever since. Fellowships were now primarily awarded to second- and third-year students pursuing a law degree. Funding for the Fellowships was derived from private sources, with one half-tuition provided by the Law School in addition to some Fellowship credit. The Center stands proud as we look back at all who have been a part of this history.

Shelley Fenchel is the Coordinator of the Center for International Studies.

“The Role of Exports and Capital Inflows in Economic Development and Industrialization”; and “The Life and Death of the Cold War: Domestic Consequences.”

Early on, the Center began sponsoring a series of Round Tables on various areas of the world in which the University demonstrated particular interest: African Studies, Near Eastern Studies and Ibero-American Studies.





“I can think of no one who has thought harder, written more, or fought more courageously to promote a more humane, effective, and values-driven system of international law.” — *Professor Harold Koh, Yale Law School*

Reflections

MOHAMED ELBARADEI

For four decades, I have known Tom Franck as a teacher, mentor, colleague and above all, a dear friend. Throughout these years I have been constantly amazed by the breadth and depth of his knowledge and interests, as well as his keen intellect.

Tom has always profoundly understood the power and potential of international law in our contemporary world both as a tool to shape our common future, and as an engine to prompt orderly change and promote the global values that he deeply believes are — or should be — common to us all. It is for these reasons that he insisted that we should understand fully the political, economic and social context in which international law operates in order to maximize its contribution and simultaneously add the necessary element of realism.

Tom is equally at ease on the streets of Dar es Salaam as in symposia at Cambridge University. He is as respectful and attentive to a first year law student as to an accomplished peer; but always with a soft spot for those who are still at the starting line.

Tom speaks with authority and equal force on the right to self-determination and international legitimacy as well as on Biedermeier furniture and Grand Cru wines.



In the course of many lively discussions both in classes and at dinner tables, we have both agreed and disagreed, but for Aida, my wife, and Laila, my budding lawyer daughter, and myself, Tom remains indisputably a cherished friend and a true inspiration.

Mohamed ElBaradei is Director General of the International Atomic Energy Agency. He was a Fellow of the Center for International Studies 1971–1974, and co-authored works with Thomas M. Franck on the International Law Commission and on geographically disadvantaged states in the law of the sea.

ANNE-MARIE SLAUGHTER

Tom Franck is the embodiment of how a life spent in the service of a larger cause can make a larger man. As I write, I have just finished the final chapter of his new book, *Recourse to Force*. Once again, he has done what he does so extraordinarily well, distilling a mixture of erudition and common sense into an elegant and compelling formulation that quickly becomes a commonplace of international legal discourse. “Compliance pull,” a “right of democratic governance,” “fairness” as a measure of legitimacy, and now the “jurying” function of U.N. institutions in reflecting the judgment of the international community — how much poorer our language and thought would be without him! His work combines sanity and wisdom, synthesis and innovation. It seeks to build toward constructive solutions to pressing contemporary and yet perennial problems, just as Tom himself builds



institutions around him in the service of international law and justice. In addition to his astonishing output as a scholar, he helped remake the American Society of International Law into an outreach organization, educating journalists, members of Congress, and, most notably, U.S. judges. He has built an extraordinary center at NYU Law, responsible for launching scores of young scholars and activists into careers in international law. And throughout his career he has helped build U.N. institutions, either directly through his leadership at UNITAR or indirectly through countless conferences and meetings designed to bring lawyers, policymakers, and activists together. Finally, Tom is a man of remarkable courtesy and grace. Never an accolade received without a warm personal note from Tom. Never a visit to New York without an invitation to lunch or dinner or an hour of spirited conversation. In all that he does, Tom himself shines through, as scholar, teacher, builder, and friend.

Anne-Marie Slaughter is Dean of the Woodrow Wilson School at Princeton University and President of the American Society of International Law.

MIRIAM SAPIRO

Tom Franck is in a class by himself. It is hard to imagine the Law School without the Center for International Studies, and impossible to imagine the Center without Tom. He has had the wisdom to bring in many fine collaborators, and the personality of the Center has been shaped for all of us



Fellows by the kindness and support of Shelley Fenchel. For me as for many, Tom's mentoring in the Center for International Studies was a career-shaping experience. Through the Fellows program he has nurtured within each of us a life-long love of and respect for international law. His enthusiasm, encouragement, wit, wisdom, and imagination have left an indelible imprint. He set the highest standards and inspired us to reach for the loftiest of personal goals in whatever life paths we chose. And his academic work has had a profound and lasting impact on the international community.

Miriam Sapiro was a Junior Fellow of the Center for International Studies in 1985–1986, and went on to serve as a State Department official (1988–1997), Director for European Affairs at the National Security Council (1997–1999), and Special Assistant to President Clinton for Southeast European Stabilization (1999–2000). She recently established her own consulting firm.

NORMAN DORSEN

My Oldest Friend On The Faculty

When I arrived in early 1961, the Law School, despite a few excellent professors and students, was struggling to emerge from mediocrity. The bad news was that the Law School administration was generally content with things as they were. The good news was that several new faculty members were determined to improve the institution. Among this group none exceeded Tom in intellectual





“I can still remember how my hopes soared after getting to know him and gauging how important his many talents and high standards could be to the School’s future.” —*Professor Norman Dorsen*

depth, devotion to students, productivity and good judgment. I can still remember how my hopes soared after getting to know him and gauging how important his many talents and high standards could be to the School’s future. Over more than four decades these hopes have been consistently fulfilled as the quality of Tom’s academic performance and the depth of our friendship have afforded me enormous professional and personal gratification.

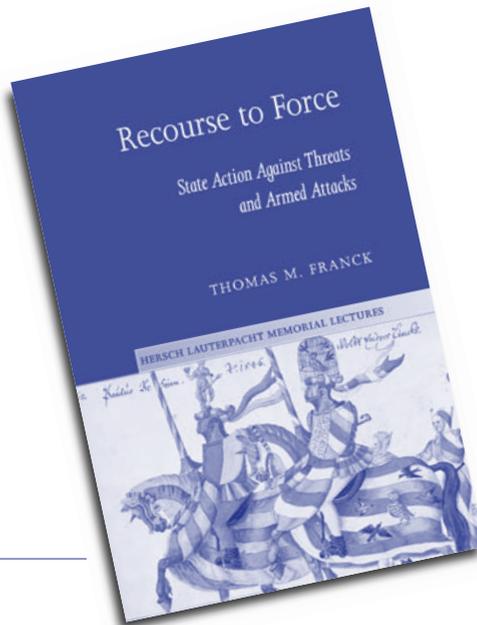
Norman Dorsen is Frederick I. and Grace A. Stokes Professor of Law; Counselor to President of the University and was the founding Chair of the Hauser Global Law School Program. He was for many years president of the American Civil Liberties Union and Chair of the Lawyers’ Committee for Human Rights.



Books by Thomas M. Franck

Recourse to Force: State Action Against Threats and Armed Attacks. Cambridge: Cambridge University Press, 2002.

Delegating State Powers: The Effect of Treaty Regimes on Democracy and Sovereignty. New York: Transnational Publishers, 2000 (editor).



The Empowered Self: Law and Society in the Age of Individualism. Oxford: Oxford University Press, 1999.

International Law Decisions in National Courts. Irvington, New York: Transnational Publishers, 1996 (co-editor).

Fairness in International Law and Institutions. Oxford: Oxford University Press, 1995.
Awarded American Society of International Law Certificate of Merit.

Fairness in the International Legal and Institutional System. The Hague: Academy of International Law, Recueil des cours, Vol. 240 (1993-III).

Foreign Relations and National Security Law (2nd Edition). St. Paul: West Publishing Co., 1993 (co-author).



Political Questions/Judicial Answers: Does the Rule of Law Apply to Foreign Affairs? Princeton: Princeton University Press, 1992.

Awarded American Society of International Law Certificate of Merit.

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Control of Sea Resources by Semi-Autonomous States: Prevailing Legal Relationships Between Metropolitan Governments and Their Overseas Commonwealths, Associated States, and Self-Governing Dependencies. New York: Carnegie Endowment for International Peace, 1978.



Resignation in Protest: Political and Ethical Choices Between Loyalty to Team and Loyalty to Conscience in American Public Life.
New York: Viking/Gross, 1975 (co-author).
Awarded Christopher Medal.

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Why Federations Fail. New York: New York University Press, 1968 (et al.).

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Comparative Constitutional Process: Cases and Materials in the Comparative Constitutional Process of Nation Building. London: Sweet & Maxwell, 1968; New York: Frederick A. Praeger, 1968.

East African Unity Through Law. New Haven: Yale University Press, 1964.

African Law. New York: Frederick A. Praeger, 1963 (co-author).

The Role of the United Nations in the Congo. New York: Frederick A. Praeger, 1963 (co-author).

Race and Nationalism. New York: Fordham University Press, 1960; London: Allen and Unwin, 1961.





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