

GERMAN YEARBOOK
OF INTERNATIONAL
LAW

VOLUME 42 · 1999



DUNCKER & HUMBLOT · BERLIN

GERMAN YEARBOOK OF INTERNATIONAL LAW

Volume 42 · 1999

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GERMAN YEARBOOK
OF INTERNATIONAL LAW
JAHRBUCH FÜR INTERNATIONALES RECHT

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Beginning in 1995, the Institut
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This Yearbook may be cited:
GYIL 42 (1999)

Please address communications to:

Editors

German Yearbook of International Law
Walther-Schücking-Institut für Internationales Recht
an der Universität Kiel
Olshausenstrasse 40, D-24098 Kiel
fax 49 431 880-1619
email office@internat-recht.uni-kiel.de

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© 2000 Duncker & Humblot GmbH, Berlin
Printed by Berliner Buchdruckerei Union GmbH, Berlin
Printed in Germany

ISSN 0344-3094
ISBN 3-428-10216-9

Gedruckt auf alterungsbeständigem (säurefreiem) Papier
entsprechend ISO 9706 ☉

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In memoriam
Abram Chayes
(1922–2000)

Felix Frankfurter, Professor of Law Emeritus, Harvard Law School

In the late afternoon of Sunday, 16 April 2000, *Abram Chayes* died in a Boston Hospital at the age of 77. His death ends the life of a most distinguished international legal scholar, brilliant and inspiring academic teacher as well as a dedicated public servant. He was a *citoyen* in the best sense of the word. But most importantly, *Abe* – the nickname that he let his family and his great number of personal friends use – was a wonderfully warmhearted and humane person, full of energy and a contagious enthusiasm and optimism. All those who were fortunate to learn to know him feel a deep sense of loss and share in the grief with his family.

Abram Chayes was born in Chicago in 1922. After graduating from Senn High School, he entered Harvard University in 1939, the place that – as he himself said – he never left. After receiving his A.B. degree in 1943, he served in the United States Army in both Europe and Asia and was discharged with the rank of Captain in 1946. He returned to Cambridge and entered Harvard Law School. His brilliance and intellectual force put him at the top of his class and was reflected in his term as President of the Harvard Law Review. Upon graduation, he served in various administrative positions in Connecticut and Washington, D.C. Later on, he clerked with Supreme Court Justice *Felix Frankfurter* and then worked with the law firm of *Covington & Burling*. He returned to Harvard and was appointed assistant professor in 1955 and became professor of law there in 1958. His only major break in serving Harvard Law School came about when he joined the *Kennedy* Administration where he served in the Department of State as Legal Adviser and became one of the most influential advisers of President *Kennedy*. His experience in Washington, which he enjoyed immensely, was recorded by him in his widely known book “The Cuban Missile Crisis,” published in 1974. In 1976 he was appointed Felix Frankfurter Professor of Law at Harvard Law School. Generations of students have benefited from his practical experience as well as from his vast scholarly work that ranged from Civil Procedure to the Law and Politics of Arms Control, International Environmental Law, the Law and Procedure of International Dispute Settlement, and new modes of international law enforcement – a concern that most

clearly evidenced his understanding of the very nature of the law as a means for non-violent peace-making and securing justice. Impressive illustrations of his approach are found in his book “International Legal Process” (co-authored) and the more recent book “The New Sovereignty. Compliance with International Regulatory Agreements” (1995/1998) that he wrote together with his wife, *Antonia Handler Chayes*, with whom he also taught many inspiring courses at Harvard. But it was not only *Abram Chayes*’ brilliant command of the law and his experience that fascinated his students. It was the impact of his humane personality and his dedication towards implanting a deep sense of values embodied in the law that molded the minds of his students and made them cherish him as the great academic teacher he was and will be always remembered. It was this very same commitment to basic human values that guided *Abram Chayes* in his scholarly writings and his teaching and that made him represent Nicaragua in the famous case *Nicaragua v. United States*. Called “America’s Accuser” in a profile published by the New York Times, *Abram Chayes* responded “that he was simply continuing his job as Legal Adviser of the State Department – trying to ensure that his country abided as faithfully as possible by the rules of the international system.”¹

During the years 1995 to 1999, I was fortunate enough to work with *Abram Chayes* in the preparation of the last case – the *Kasikili/Sedudu Island* case (*Namibia v. Botswana*) – he argued before the International Court of Justice. All I had heard about him was manifest in our meetings and private conversations. These qualities included his admirable command of the law and of the facts of the case, his untiring energy, his enthusiasm, and, of course, his humane leadership of the team of counsels. We became very close. It is rare that one wins such a great friend at a rather late stage in life. All the greater is the sense of loss that I share with all his friends and his family.

Jost Delbrück

¹Related by *Anne Marie Slaughter*, Tribute to Professor Abram Chayes, delivered at the HLSA Award Ceremony, 24 April 1999, available at: <http://www.law.harvard.edu/news/slaughter-chayes.html>.

FOCUS SECTION:
THE LAW OF INTERNATIONAL TREATIES
IN THE 21st CENTURY

**Evolutionary Treaty Interpretation, Especially of the
European Convention on Human Rights**

By Rudolf Bernhardt

I. The Problem

The interpretation of legal texts is the daily business of jurists. In the internal legal order, unilaterally enacted laws and contracts concluded between private persons are the main texts to be interpreted and applied. In public international law, treaties concluded between sovereign States are one of the main sources, or even the main source, of rights and obligations of the subjects of international law, and these subjects are primarily the same sovereign States that have concluded the agreements.

The special and unique characteristics of the international legal order have had and still have the consequence that the principles and rules of treaty interpretation are to a considerable extent different from the rules applied in the internal legal order of States. From *Hugo Grotius* to the modern treatises, textbooks on public international law have discussed and developed a canon of rules for treaty interpretation. International courts and tribunals have sometimes expressly stated what rules and principles they are applying when construing treaties,¹ and the Vienna conventions on the law of treaties² have tried to codify the applicable principles and rules. The

¹ I have tried to describe the relevant rules of treaty interpretation in different publications: *Die Auslegung völkerrechtlicher Verträge insbesondere in der neueren Rechtsprechung internationaler Gerichte*, 1963; *Interpretation in International Law*, in: *R. Bernhardt* (ed.), *Encyclopedia of Public International Law (EPIL)*, vol. II, 1995, 1416–1426 (with an extensive bibliography).

² Vienna Convention on the Law of Treaties (between States) of 23 May 1969, 1155 UNTS 331 (hereinafter referred to as 1969 Convention); Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986, 25 ILM 543.