

GERMAN YEARBOOK  
OF INTERNATIONAL  
LAW

VOLUME 21 · 1978

DUNCKER & HUMBLLOT · BERLIN

GERMAN YEARBOOK OF INTERNATIONAL LAW

Volume 21



GERMAN YEARBOOK  
OF INTERNATIONAL LAW  
JAHRBUCH FÜR INTERNATIONALES RECHT

Volume 21 · 1978

founded by

RUDOLF LAUN · HERMANN VON MANGOLDT

Editors:

Jost Delbrück · Wilfried Fiedler · Wilhelm A. Kewenig

Assistant Editor: Eibe H. Riedel

Institut für Internationales Recht an der Universität Kiel



DUNCKER & HUMBLLOT / BERLIN

*The Editors and the Institut für Internationales Recht  
do not make themselves in any way responsible  
for the views expressed by contributors*

This Yearbook may be cited:

GYIL 21 (1978)

Communications should be addressed to:

The Editors  
German Yearbook of International Law  
Institut für Internationales Recht  
an der Universität Kiel  
Olshausenstrasse 40/60  
D-2300 Kiel 1

All rights reserved  
© 1979 Duncker & Humblot, Berlin 41  
Printed 1979 by Vollbehrr u. Strobel, Kiel, Germany  
ISBN 3 428 04158 5

## CONTENTS

### *Articles*

G. E. DO NASCIMENTO E SILVA: Privileges and Immunities of Permanent Missions to International Organizations . . . . .	9
FRIEDER ROESSLER: Law, De Facto Agreements and Declarations of Principle in International Economic Relations . . . . .	27
PAUL HEINRICH NEUHAUS: Der Beitrag des Völkerrechts zum Internationalen Privatrecht . . . . .	60
<i>Summary: The Contribution of Public International Law to Private International Law</i> . . . . .	72
BRUNO SIMMA: Termination and Suspension of Treaties: Two Recent Austrian Cases . . . . .	74
RICHARD B. LILlich / STEPHEN C. NEFF: The Treatment of Aliens and International Human Rights Norms: Overlooked Developments at the UN . .	97
FRITS KALSHOVEN: International Concern with Human Rights: Can It Be Effective? . . . . .	119
MARIO'N MUSHKAT: The Development of International Humanitarian Law and the Law of Human Rights . . . . .	150
CLAUDE PILLOUD: Les Conventions de Genève de 1949 pour la protection des victimes de la guerre, les Protocoles additionnels de 1977 et les armes nucléaires . . . . .	169
<i>Summary: The Geneva Conventions of 1949 on the Protection of War Victims, the Additional Protocols of 1977 and Nuclear Arms</i> . . . . .	178
BIRGIT LAITENBERGER: Die Schutzmacht . . . . .	180
<i>Summary: The Protecting Power</i> . . . . .	205
DIETER BLUMENWITZ: Die mögliche Gestaltung der Beziehung der Bundesrepublik Deutschland zum Internationalen Gerichtshof . . . . .	207
<i>Summary: The Possible Relations between the Federal Republic of Germany and the International Court of Justice</i> . . . . .	250

KAY-MICHAEL WILKE: Das Viermächte-Abkommen über Berlin 1971–1976. Bilanz der politischen Praxis . . . . .	252
<i>Summary: The Quadripartite Agreement on Berlin 1971–1976. An Account of it in Political Practice</i> . . . . .	270
D. S. CONSTANTOPOULOS: Die türkische Invasion in Zypern und ihre völker- rechtlichen Aspekte . . . . .	272
<i>Summary: International Law Aspects of the Turkish Invasion of Cyprus</i>	308
YILMAZ ALTUG: The Cyprus Question . . . . .	311
HAROLDO VALLADAO: Actualisation et spécialisation des normes de droit inter- national privé des états américains . . . . .	335
<i>Summary: Actualization and Specialization of Private International Law Rules amongst American States</i> . . . . .	349
STEPHAN JASCHEK: Die Chinesische Völkerrechtsdoktrin im Lichte der „Drei- Welten“-Theorie . . . . .	363
<i>Summary: The Chinese Doctrine of Public International Law in the Light of the "Three-Worlds"-Theory</i> . . . . .	385

### Documentation

HARRO VON SENGER: Völkerrechtliche Begriffe in chinesischer Sicht. <i>Public International Law Terms in Chinese Perspective</i> . . . . .	387
---	-----

### Reports

KAREL WELLENS: Transnational Corporations: UN Involvement towards a Code of Conduct . . . . .	442
EIBE H. RIEDEL: Die Tätigkeit der International Law Commission im Jahre 1977	462
WILFRIED WULF: Die Tätigkeit des Europarates im Jahre 1977 . . . . .	480
HANS G. KAUSCH: Die Europäischen Gemeinschaften im Jahre 1977 . . . . .	497
WULF HERMANN: Die Tätigkeit des Nordischen Rates im Jahre 1977 . . . . .	516

*Book Reviews*

The Continental Shelf ( <i>Lagoni</i> ) . . . . .	530
ULF-DIETER KLEMM: Die seewärtige Grenze des Festlandssockels (Summary: The Seaward Limit of the Continental Shelf) BERND RÜSTER: Die Rechtsordnung des Festlandssockels	
European Community Law ( <i>Kausch</i> ) . . . . .	533
HENRY G. SCHERMERS: Judicial Protection in the European Communities L. J. BRINKHORST/H. G. SCHERMERS: Judicial Remedies in the European Communi- ties MANUEL MEDINA: La comunidad europea y sus principios constitucionales MANUEL MEDINA: Tratados fundacionales de las Comunidades Europeas Die Außenbeziehungen der Europäischen Gemeinschaft BRANKO TOMSA: La politique commerciale commune de la CEE et les pays de l'Europe de l'Est	
International Criminal Law ( <i>Regge</i> ) . . . . .	537
WOLFGANG ZIEHER: Das sog. Internationale Strafrecht nach der Reform KARIN CORNILS: Die Fremdrechtsanwendung im Strafrecht insbesondere bei der Auslegung rechtlich normativer Tatbestandsmerkmale Strafgesetzbuch und Strafprozeßordnung der DDR mit Nebengesetzen	
Nukleare Proliferation und Abrüstung ( <i>Schütz</i> ) . . . . .	541
The Nuclear Age Nuclear Proliferation Problems Safeguards Against Nuclear Proliferation World Armaments and Disarmament World Armaments and Disarmament	
*	
Annales d'études internationales — Annals of International Studies ( <i>Magiera</i> ) . . .	546
La crise des paiements internationaux et le développement du commerce Est-Ouest ( <i>Zotschew</i> ) . . . . .	547
ENGELS: Die Entwicklung des französischen Rechts der Koalitionen ( <i>Wulf</i> ) . . . . .	548
JASCHEK: Wörterbuch der internationalen Beziehungen. Chinesisch-Deutsch ( <i>Riedel</i> ) .	549
LEBAHN: Sozialistische Wirtschaftsintegration und Ost-West-Handel im sowjetischen internationalen Recht ( <i>Schröder</i> ) . . . . .	550
VON MÜNCH: Grundgesetz-Kommentar ( <i>Fiedler</i> ) . . . . .	552



NAHLIK: Kodeks prawa traktatów ( <i>Pusylewitsch</i> ) . . . . .	554
NAWAZ: Essays on International Law in Honour of K. Krishna Rao ( <i>Nascimento e Silva</i> ) . . . . .	556
Netherlands Yearbook of International Law 1976, 1977 ( <i>Riedel</i> ) . . . . .	558
PAPADAKIS: The International Legal Regime of Artificial Islands ( <i>Lagoni</i> ) . . . . .	559
RAMCHARAN: The International Law Commission ( <i>Riedel</i> ) . . . . .	561
SCHAPS-ABRAHAM: Das Seerecht in der Bundesrepublik Deutschland ( <i>Thiele</i> ) . . . . .	562
SCHERRER: Der Zollanschluß der deutschen Enklave Büsingen an die Schweiz ( <i>Brintzinger</i> ) . . . . .	565
STAUFFER: Nachtrag 1977 zur Praxis zum NAG ( <i>Magiera</i> ) . . . . .	567
TRUYOL Y SERRA: Fundamentos de derecho internacional publico ( <i>Kausch</i> ) . . . . .	567
VALLADÃO: Direito Internacional Privado ( <i>Riedel</i> ) . . . . .	567
VERZIJL: International Law in Historical Perspective ( <i>Riedel</i> ) . . . . .	568
WUPPERMANN: Die deutsche Rechtsprechung zum Vorbehalt des ordre public im Internationalen Privatrecht seit 1945, vornehmlich auf dem Gebiet des Familien- rechts ( <i>Graue</i> ) . . . . .	570
<i>Publications of the Institute for International Law at the University of Kiel</i>	
WEGE: Positives Recht und sozialer Wandel im demokratischen und sozialen Rechts- staat ( <i>Häberle</i> ) . . . . .	572
Books Received . . . . .	576
<i>List of Contributors</i> . . . . .	578

## ARTICLES

### **Privileges and Immunities of Permanent Missions to International Organizations**

G. E. do Nascimento e Silva

The problems relating to the privileges and immunities of the permanent missions to international organizations and of their members have become extremely complex since World War II, especially with the increase in the number of these organizations. The ease with which delegates can participate nowadays in the meetings of these organizations, all of which are composed of various organs, increases these international meetings at an extraordinary rate.

International law governing diplomacy was, up until 1961, quite satisfactory, so much so that the Vienna Conference on Diplomatic Relations acted in a general way *de lege lata*. The legal situation of the permanent representation to international organizations and the status of its representatives and delegates to international conferences on the contrary was, and still is, quite nebulous. Even though a Convention on the representation of states in their relations with international organizations of a universal character was signed during the Conference held in Vienna from February 4 to March 16, 1975, and though it was a result of many years of hard study by the International Law Commission, many doubts still remain even though reasonably good guide-lines were adopted on that occasion with regards to most of the legal problems on the subject. The main difficulties, which still exist, can be traced to the nature of international organizations which can have among their members the whole international community or the majority of the States as in the case of the United Nations, or only three or four members and which can be of a very limited objective.

In the case of congresses or conferences the status of delegates will vary accordingly with the subject matter. It may be an inter-governmental conference or a mere non-governmental reunion and congresses of this kind increase annually and cover an enormous variety of human activities. International nongovernmental organizations (INGOs) easily outnumber the impor-

tant specialised agencies that have their situation regulated under the Charter of the United Nations. The Vienna Conference of 1975 tried to delimit the field of the Convention which was adopted and we read in the definitions that an international organization of a universal character "means the United Nations, the specialised agencies, the International Atomic Energy Agency and any similar organization whose membership and responsibilities are on a world-wide scale." To fully understand this definition one must go back not only to Ambassador El-Erian's report but also to the various observations made in Vienna in that year.

The problem of the privileges and immunities of the permanent missions is, in terms of international law, a recent one and can be traced back to March 1924, when the Foreign Minister of Brazil informed the Secretary-General of the League of Nations that his government was creating in Geneva a permanent representation which would be headed by an Ambassador with the privileges and immunities of an Ambassador. Since some doubts were raised, the legal adviser of the Brazilian Ministry of Foreign Affairs, Professor Clovis Bevilacqua, in an opinion of June 1925, pointed out that "the country where the League of Nations has its seat must respect the immunities which international law grants to the delegates of States when they have a public character and when they are in that country in the exercise of their functions *vis à vis* the League, simply because they are in that country with that objective. The delegates of other countries to the League of Nations have, due to their capacity as representatives of sovereign States, a right to those immunities which are generally recognized in the case of diplomatic agents. The situation of Switzerland, in this case, is similar to that of Holland where the Permanent Court of International Justice has its seat and whose members enjoy diplomatic privileges and immunities"<sup>1</sup>.

This decision of the Brazilian Government caused a certain amount of surprise among students of international law and the first opinions were of a negative character. According to Professor Siotto-Pintor, the League of Nations did not have a right of legation: "The presence in Geneva of representatives of various States to the League of Nations is not, in my opinion, a strong argument. These representatives are mere liaison or observation organs and do not possess the juridical basis to represent their respective States in the League in their relations and in questions of an international character. They are not diplomatic agents and therefore it would be difficult to define their finalities and field of action. The constitution of the League of Nations does not contain an explicit or even an implicit reference to organs of this nature.

---

<sup>1</sup> Pareceres do Consultores Jurídicos do Ministério das Relações Exteriores (*Pareceres*) (1913—1934), 1962, 311.

Be that as it may, the League can only possess the passive right of legation and such a situation is contrary to the nature of this institution”<sup>2</sup>.

Paul Fauchille, commenting in 1926 on this situation wrote: “The solution may, at first sight, be surprising since the League of Nations is not a superstate. However, it is not wholly unfounded. Even though the League of Nations is not a superstate it is in effect a subject of international law”<sup>3</sup>.

One month later the Brazilian example was followed by Poland and soon after Chile and Argentina adopted an identical attitude. Some governments, however, in doubt about the legal position of such permanent representations, preferred to open mere *bureaux de liaison*. These offices, as the name clearly implies, did not have the same functions or powers of the permanent representations and in consequence their privileges and immunities had to be necessarily of a less important nature. While the permanent representations were usually headed by Ambassadors or Ministers, the same did not occur in the case of the heads of liaison offices.

The legal regime applied by the Federal Government of Switzerland to the permanent delegations to the League of Nations was in the beginning granted provisionally and was identical to that granted to the diplomatic missions in Berne and based on the same distinctions of grades and functions<sup>4</sup>.

The inclusion in the Charter of the United Nations of the provisions of articles 104 and 105, to which we shall refer again, marked a decisive point in the development of the law relating to the legal status of international organizations.

The General Assembly of the United Nations immediately began to study the implementation of these articles and adopted on February 13, 1946 a “Convention on the Privileges and Immunities of United Nations”, in which we find in article IV, sections 11 to 16, the privileges and immunities to be accorded to the representatives of members of missions. “The Convention served as a prototype for and greatly helped in the drafting of a number of conventions between the United Nations, the Specialised Agencies or regional organizations and states”<sup>5</sup>.

In 1959, by its resolution 1289 (XIII), the General Assembly invited the International Law Commission to consider the question of relations between

---

<sup>2</sup> *M. Siotto-Pintor*, Les Sujets du Droit International autres que les Etats, Recueil des Cours de l'Académie de Droit International, 1932 III, 245—361 (300).

<sup>3</sup> *Paul Fauchille*, Traité de Droit International Public, tome 1er, troisième partie, 1926, 35.

<sup>4</sup> *Jaques Secretan*, Les Immunités diplomatiques des Représentants des Etats membres de la Société des Nations, 1928, 29.

<sup>5</sup> *Abdullah El-Erian*, First Report on Relations between States and Intergovernmental Organizations, Yearbook of the International Law Commission (YILC) 1963, vol. II, 159.