

# The German Yearbook of International Law: Origins, Development, Prospects\*

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## Abstract

This article examines the history, development, function, and future of the German Yearbook of International Law (GYIL). The article traces the evolution of the GYIL over many decades, from its inception in the aftermath of the Second World War to the present day, demonstrating how it has moved beyond its origins as a forum in which German scholars could publish their research to become a global platform for the dissemination of scholarship in international law. The article also aims to show how the structure and contents of the GYIL have developed in the years since its establishment, reflecting in particular on the impact of the decision to begin to publish contributions authored in English in order to reach the widest possible international audience and the introduction of a double-blind peer review procedure. The article concludes that the function and future of the GYIL lie in its capacity to inform a global readership about current research and practice in the sphere of international law taking place in Germany while, at the same time, presenting international viewpoints to a German audience.

## Keywords

German Yearbook of International Law; (Public) International Law; Germany; Second World War; Kiel; Peer Review.

## 1. Origins: The *Jahrbuch für internationales und ausländisches öffentliches Recht*

### 1.1 *The Context: International Law Periodicals in Post-War Germany*

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\* Parts of this article draw upon von Arnould and Kresse 2017. All errors remain, of course, the responsibility of the present authors.

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The Second World War largely brought the publication of German international law journals to a standstill.<sup>1</sup> Though a number of journals devoted to law in general, but which occasionally also dealt with matters of international law, later recommenced operations, there were no longer any periodicals exclusively devoted to international law in Germany in the years immediately following the end of the war.<sup>2</sup> This situation was the subject of the first post-war conference of German international law experts in Hamburg. This gathering, which took place in March 1947 at the invitation of Rudolf Laun (1882-1975), Head of the Hamburg Research Centre for Foreign Public Law and International Law and also the Rector of the University of Hamburg, was attended by scholars from all four zones of occupation.<sup>3</sup> In addition to resolutions on the legal status of Germany, attendees also discussed the establishment of a new periodical, to be published by Laun together with the Director of the Kiel Institute for International Law, Hermann von Mangoldt (1895-1953).<sup>4</sup>

While the future yearbook was intended to react to the lack of journals on international law, only a few years later there were already three international law periodicals in Germany: The *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* appeared again from 1950/51<sup>5</sup> and, in the same year as the *Jahrbuch für internationales und ausländisches öffentliches Recht (Jahrbuch)*, 1948, the first issue of the *Archiv des Völkerrechts (AVR)* was published.<sup>6</sup> The motives behind the foundation of the *AVR* merit further research; particularly against the background of the mandate that Laun and von Mangoldt had received in Hamburg for their periodical, its foundation seems like an act of opposition. The Hamburg conference had met with criticism, especially among remigrants and other victims of Nazi persecution,

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<sup>1</sup> Kunz 1949, at 508-509 ('The most devastating effect of the war on periodical publications on international law was, of course, in Germany. The journal *Völkerbund und Völkerrecht* was terminated. All the great German periodicals of international law were continued through the first years of the war, but sooner or later came to an end. This was the case of *Niemeyer's Zeitschrift für Internationales Recht*, and of the *Zeitschrift für Völkerrecht*. The very important *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* came to an end in 1939. None of these great German periodicals has been revived up to now.'). To this should be added *Die Friedens-Warte*, a journal founded by Alfred Fried in 1899 and which had considerably gained in scholarly status after Hans Wehberg assumed the role of editor in 1924. Since 1928, however, the editorial office was in Switzerland as Wehberg had been appointed Professor at the *Institute des Hautes Études Internationales* in Geneva. On the history of German international law journals before World War II, see Hueck 1999; von Arnould and Kresse 2017, at 368-379.

<sup>2</sup> Kunz 1949, at 509 ('Immediately after Germany's total defeat and during 1946 and even 1947 there were no periodical publications of international law.').

<sup>3</sup> On the Hamburg post-war conferences and the re-establishment of the *Deutsche Gesellschaft für Völkerrecht (DGVR)*, see Mosler 1990, at 9-17.

<sup>4</sup> See Laun and von Mangoldt 1948b, at 242.

<sup>5</sup> The *ZaöRV* had first appeared in 1929. Its last edition until 1950/51 (volume 12) was published in 1944 (not in 1939 as reported by Kunz 1949, at 509).

<sup>6</sup> de la Rasilla 2018, at 154. The *Zeitschrift für Internationales Recht und Diplomatie* (Journal for International Law and Diplomacy), published by Rudolf Laun on behalf of the German Society for Foreign Policy from 1956 onwards and which ceased to appear in 1977-80, should also be mentioned. See Stolleis (2012), at 90.

because the international law experts gathered there ‘stylised the Germans as victims’.<sup>7</sup> The founding editors of the *AVR*, Walter Schätzel (Mainz, later Bonn), Hans-Jürgen Schlochauer (Cologne, later Frankfurt) and Hans Wehberg (Geneva), all had close connections to the pacifist German international lawyer and judge of the Permanent Court of International Justice (and, ironically, Director of the Kiel Institute from 1926 to 1933), Walther Schücking (1875-1935).<sup>8</sup> True to Schücking’s belief in peace through law and international organisation,<sup>9</sup> with the very first volume of the *AVR* and a focus on the United Nations the editors embraced the new world order – while the *Jahrbuch* at its inception was more indebted to a ‘traditional’ State-centred conception of international law.

Another major difference between the *AVR*, the *Jahrbuch*, and (later) the *ZaöRV* was that the latter two had institutional ‘home bases’: While the *Jahrbuch* was edited jointly by the long-established Institutes in Kiel and Hamburg (founded in 1914 and 1923, respectively), the *ZaöRV* was edited by the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, which had taken over from the formerly Berlin-based eponymous Kaiser Wilhelm Institute. With these institutions gradually rebuilt after the war, it came naturally that their members and associates should contribute to their respective ‘house publications’ whereas the *AVR* had to rely on contributions by the prolific Schlochauer and the Editors’ professional networks. That said, those networks had necessary overlaps given the relatively small and well-connected international law community in Germany that was, at the time, the main target group for all three periodicals – which were predominantly published in German and only occasionally included contributions in English or French. Thus, clear ‘profiles’ were not easy to maintain and would regardless vary over time due to changes in the editorial boards.<sup>10</sup>

At the same time as Schätzel, Schlochauer and Wehberg first published the *AVR*, Laun and von Mangoldt founded their new *Jahrbuch für internationales und ausländisches öffentliches Recht*. The choice of the title was based on pragmatic considerations:<sup>11</sup> A yearbook was covered by a publisher’s licence, even if it appeared – like the *Jahrbuch* – in several issues, while a periodical would have required a special licence from the occupying power – subject to a fee.<sup>12</sup> Instead of

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<sup>7</sup> Stahl 2015.

<sup>8</sup> Wehberg (1885-1962) had been a close collaborator already before World War I and had co-authored an important commentary on the Covenant of the League of Nations with Schücking; Schätzel (1890-1961) had received his post-doctoral qualification (*Habilitation*) in Kiel in 1927 under his tutelage; Schlochauer (1906-1990) had briefly worked as Schücking’s assistant at the Permanent Court of International Justice after emigrating from Germany due to racist persecution.

<sup>9</sup> Cf Tams 2011; Bodendiek 2011; García-Salmones 2011; Delbrück 2011.

<sup>10</sup> For a closer analysis see von Arnould and Kresse 2017, at 391-400.

<sup>11</sup> See generally Hecker 1983, at 185–428 (especially at 369 and following).

<sup>12</sup> von Arnould and Kresse 2017, at 382.

‘Völkerrecht’ (‘public international law’), the term ‘internationales Recht’ (‘international law’) was chosen in order not to use the word ‘Recht’ (‘law’) twice in the title. In their foreword to the first volume (1948), the two Directors of their respective North German institutes emphasised their joint commitment to the establishment of the *Jahrbuch*.<sup>13</sup> They had regarded it as ‘one of their most urgent tasks’ to create an organ for the two institutes and for German international lawyers which could ‘publish the results of their research work’.<sup>14</sup> Laun and von Mangoldt, who were entrusted with the role of Editors, described their task as making available to German scholars the ‘particularly fluid international legal material after the world wars’ for the preservation of peace and the reconstruction of relations between States.<sup>15</sup> In addition, as von Mangoldt writes elsewhere, their aim was to overcome years of isolation (by reprinting the research results of German international law scholars and thus to contribute to the integration of Germany into the community of States and the maintenance of peace).<sup>16</sup>

### *1.2 Troubled Beginnings: The First Two Volumes of the Jahrbuch 1948/49*

The first volume of the *Jahrbuch* presented papers from the 1947 Hamburg conference and its 1948 follow-up as well as articles on related topics. From the 1947 conference, two papers dealing with the legal status of Germany were chosen, one by Rudolf Laun himself,<sup>17</sup> and one authored by a presiding judge of the Hamburg Higher Regional Court.<sup>18</sup> These were accompanied by – doubtlessly commissioned – articles on the same topic written by Eberhard Menzel (Hamburg)<sup>19</sup> and F. A. Mann (London).<sup>20</sup> While the German contributions were keen to prove that the unconditional surrender had not affected German statehood and to qualify the Allied powers as occupying forces, Mann, himself a German emigrant, leaned more towards a *sui generis* status. However, both he and Menzel rejected Hans Kelsen’s idea that Germany had become a condominium of the Allied powers in 1945<sup>21</sup> and instead identified it as a co-imperium. A third paper taken from the 1947 Hamburg conference began a section on the law of occupation: Hans Peter Ipsen (Hamburg) highlighted problems of Allied interference with

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<sup>13</sup> Laun and von Mangoldt 1948a, at 3.

<sup>14</sup> Laun and von Mangoldt 1948a, at 3 (translation by authors).

<sup>15</sup> Laun and von Mangoldt 1948a, at 4 (translation by authors).

<sup>16</sup> As von Mangoldt wrote in a letter to James T. Shotwell, President of the Carnegie Endowment for International Peace on 14 August 1949. Cited in Rohlf’s 1997, at 67.

<sup>17</sup> Laun 1948.

<sup>18</sup> von der Decken 1948.

<sup>19</sup> Menzel 1948.

<sup>20</sup> Mann 1948.

<sup>21</sup> Kelsen 1945.

the German judiciary,<sup>22</sup> a practice also criticised by a senior civil servant from the Hamburg Justice Department.<sup>23</sup> One theme running through these and further contributions on the topic was that the measures taken by the Allied forces in Germany in certain respects went beyond the powers accorded to the occupant under international law.<sup>24</sup> The *basso continuo* of the first volume's first instalment – to 'normalise' Germany's legal status and to bind the Occupying Powers to their legal obligations – is also discernible in the second instalment. Here Hermann von Mangoldt argues for a limitation of criminal prosecution to war crimes proper and against concepts like 'crimes against peace' or 'crimes against humanity'.<sup>25</sup> Curiously, he decided to publish his paper, already finished in June 1945, unaltered, perhaps as to not openly comment on the Nuremberg trials. This fell to Hermann Mosler (Bonn, later Heidelberg) who warned against French proposals to criminalise any (i.e. also lawful) military action conducted by an aggressor State's forces.<sup>26</sup>

By taking up the main topic of the 1948 Hamburg conference, the second volume sets out in a less traditionalist and introspective vein. The topic being the development of international law prompted Rudolf Laun to open with his own reflections on the place of natural law in a basically positivist international legal system,<sup>27</sup> a theme echoed in the Hamburg paper of Hermann Jahrreiß (Cologne), which pointed toward the coexistence of, and frictions between, a State-centred law of nations and the law of a World State.<sup>28</sup> While both Laun and Jahrreiß, to a certain degree, showed some sympathy with the latter, the positivist, State-centred model certainly loomed large in two commissioned articles that follow, by former diplomat Paul Barandon on the lack of willingness on the part of States to submit to the newly created International Court of Justice,<sup>29</sup> and by another German *émigré*, Georg Schwarzenberger (London), championing the inductive method in international law.<sup>30</sup> The first two volumes reflect the central function of the Hamburg conferences for selecting the *Jahrbuch*'s topics: commissioned articles came mostly from younger scholars and practitioners from Germany. That the only contributions from non-German authors were from German emigrants (both naturalised in Britain), illustrates the estrangement that in general still existed between international lawyers in Germany and abroad.

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<sup>22</sup> Ipsen 1948.

<sup>23</sup> Dervedde 1948.

<sup>24</sup> See also Schmid 1948; Butz 1948; Stappert 1948.

<sup>25</sup> von Mangoldt 1948.

<sup>26</sup> Mosler 1948.

<sup>27</sup> Laun 1949.

<sup>28</sup> Jahrreiß 1949.

<sup>29</sup> Barandon 1949.

<sup>30</sup> Schwarzenberger 1949.

However, as witnessed by the contributions by Laun and Jahrreiß in the second volume, international legal scholarship in Germany also tried to catch up with the changes in international law. At the second Hamburg conference in April 1948, Gerhard Leibholz explained in his speech that ‘the traditional concept of the international legal community is increasingly about to cease to exist in political reality [...] such homogeneity existed among the members of the traditional international legal community until the 20th century’.<sup>31</sup> For him there was therefore ‘a contradiction between codified international law, which still continues in the old traditional forms and does not take note of the fundamental structural changes in interstate life, and political reality’.<sup>32</sup> In agreement with this analysis (and on a more positive note), Laun and von Mangoldt include the reorganisation of the relationship between the individual and international law among these fundamental changes: ‘Until now, positive international law was essentially a law between States, today the individual, as a subject of international law and obligation, stands alongside the State.’<sup>33</sup>

Not everything ran as harmoniously as the preface to the first volume of the *Jahrbuch* might suggest. The founders’ original plan was to establish a joint editorial department in Hamburg, but this seems to have failed due to tensions between von Mangoldt and the *de facto* managing director of the Hamburg Research Centre, Eberhard Menzel (1911-1979).<sup>34</sup> In the midst of these disputes, a plan had arisen in Hamburg to establish its own international law journal (an idea that Menzel himself did not support); von Mangoldt even asked Laun to dismiss Menzel from the editorial staff.<sup>35</sup> It was eventually agreed that editorial supervision over the four instalments of the *Jahrbuch* planned for each year should rotate between the Hamburg Research Centre and the Kiel Institute for International Law. After the first issue of 1948, edited in Hamburg, the next two issues were edited in Kiel, with the fourth again edited in Hamburg.

The publication was also burdened by difficulties with the publisher. The Hamburg publisher Robert Mölich and his *Rechts- und Staatswissenschaftlicher Verlag* had taken over the distribution of the *Jahrbuch*.<sup>36</sup> Due to an acute shortage of paper, however, it was difficult to procure the six tonnes required for printing, especially since the planned participation of the *Europa-Archiv* in the documentation part did not materialise. The first issue was slated to be published before the start of the second Hamburg conference, but could not be published in

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<sup>31</sup> Leibholz 1949, at 418. The article was published in the *AVR*, most probably because of the editorial troubles the *Jahrbuch* witnessed in 1948/49.

<sup>32</sup> Leibholz 1949, at 421f.

<sup>33</sup> Laun and von Mangoldt 1948a, at 3 (translation by authors).

<sup>34</sup> von Arnould and Kresse 2017, at 383.

<sup>35</sup> Hecker 1983, at 370, fn. 29.

<sup>36</sup> Hecker 1983, at 370 (and following).

time. When the publisher ran into financial difficulties after the currency reform in the three Western occupied zones of Germany in June 1948, the fourth issue, which had already been printed, could no longer be published there. It was ultimately published in 1950 by *Hansischer Goldenverlag* in Hamburg as the second volume (1949) of the *Jahrbuch*.<sup>37</sup>

## 2. From the *Jahrbuch* to the German Yearbook of International Law (GYIL)

Due to financing problems, the second volume was the last for several years. It was not until 1954 that the third volume could be published under the new title *Jahrbuch für internationales Recht*. The change of title was deliberately intended to include private international law, which was also practised at the Kiel Institute, not least because of lucrative commissions for expert opinions.<sup>38</sup> Publication and printing were transferred to the Göttingen publishers *Vandenhoeck & Ruprecht*, with whom von Mangoldt was able to obtain more favourable conditions due to family relationships.<sup>39</sup> Three issues were to be published annually, which were to continue to be edited alternately in Hamburg and Kiel. In Kiel, von Mangoldt was involved in the editorial work with the Institute, while on the Hamburg side, Rudolf Laun, by then Emeritus, acted as Editor in personal capacity with his former assistant, Dimitri Constantopoulos (1916-2008), serving as the Managing Editor. The Research Centre only ‘participated’ in the editorial work – and in return received 30 free copies of each volume.<sup>40</sup> The financing of the *Jahrbuch* was largely secured by von Mangoldt. In close cooperation with the *Nordwestdeutscher Rundfunk* and the Hans Bredow Institute for Radio and Television at the University of Hamburg, he succeeded in incorporating a radio and broadcasting law department into the Kiel Institute, thereby obtaining financial support.<sup>41</sup> The *Jahrbuch* dedicated a separate section to radio and broadcasting law from the third volume onwards, covering some controversial topics – these were the days of Cold War propaganda – like the freedom of States to broadcast,<sup>42</sup> the legal status of transmitter stations on foreign soil<sup>43</sup> or at sea,<sup>44</sup> or the freedom of information,<sup>45</sup> but also less contested issues like the International Broadcasting Organisation<sup>46</sup> or recent national

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<sup>37</sup> Hecker 1983, at 371.

<sup>38</sup> von Arnould and Kresse 2017, at 384. Another reason was that there was no further need to cover foreign public law with the *ZaöRV* appearing again from 1950/51. Böhmert and Laun 1950/51, at 8.

<sup>39</sup> The publishing house belonged to his cousin, Günther Ruprecht. See Rohlf s 1997, at 67.

<sup>40</sup> Rohlf s 1997, at 67.

<sup>41</sup> Rohlf s 1997, at 68.

<sup>42</sup> Joeden 1950/1; Joeden 1952/53.

<sup>43</sup> Schuster and Preßler 1955.

<sup>44</sup> Krämer 1961/62.

<sup>45</sup> Rudolf 1954.

<sup>46</sup> Krause-Ablaß 1965.

broadcasting legislation.<sup>47</sup> The financing was thus shared equally between the Kiel Institute, the Hans Bredow Institute and (for the Hamburg partners) the Joachim Jungius Society of the Sciences.<sup>48</sup> The endeavour proved protracted, however, so much so that when the third volume was finally published in 1954, it opened with an obituary for Hermann von Mangoldt, who had died unexpectedly on 24 February 1953.

The by-then-only-indirect influence of the Hamburg Research Centre diminished further after volumes three and four in 1954. This did not change when its Managing Director, Eberhard Menzel, took over the directorship of the Kiel Institute for International Law in 1955, as successor to von Mangoldt, and Herbert Krüger succeeded Laun as head of the Research Centre. Laun and Constantopoulos remained partners on the Hamburg side. When the latter was appointed Professor in Thessaloniki in 1960 and thus retired from the editorial staff, the *Jahrbuch* was in fact edited solely in Kiel from volume 10 (1962) onwards. Only the commemorative volume for Laun's 80th birthday, volume 11 (1962) of the *Jahrbuch*, was redacted by the Research Centre. From volume 14 (1969), any remaining involvement on the part of the Hamburg partners ceased, and, when the publisher changed from *Vandenhoeck & Ruprecht* in Göttingen to *Duncker & Humblot* in Berlin from volume 17 (1974), operations were, finally and officially, run only from Kiel.<sup>49</sup>

With the Kiel Institute having assumed sole responsibility for the editorial work (and with a secure financial basis), the need to have the *Jahrbuch* published in separate issues was eliminated. From volume 12 (1965), it appeared in book form, every two years at first, and annually after the change of publisher. With volume 19 (1976), not only did Jost Delbrück and Wilfried Fiedler join Wilhelm Kewenig as Co-Directors of the Kiel Institute and Editors of the *Jahrbuch*; the *Jahrbuch* also changed its title a second time, to the German Yearbook of International Law (GYIL). The GYIL and, from volume 20 (1977) onwards, its individual sections, received English titles, however, only some of the contributions were published in English. In the foreword to volume 19 (1976), Kewenig writes: 'Unfortunately, the editorial staff does not have sufficient funds at its disposal to provide English translations of all the contributions written in German'.<sup>50</sup> This said, Kewenig also noted the success of the editorial staff 'in widening considerably the circle of foreign authors'.<sup>51</sup> A conversion to English (but for reports on the activities of select international organisations and institutions addressed to a

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<sup>47</sup> Thiem 1956; Stahl 1967.

<sup>48</sup> Hecker 1983, at 371.

<sup>49</sup> Ibid.

<sup>50</sup> Kewenig 1976, at 5.

<sup>51</sup> Ibid.



German audience) did not take place until volume 35 (1992). The complete switch to English in 2009 and the introduction of a formalised peer review procedure the following year were further steps on that same path to secure the GYIL its standing in a global community of international lawyers in which the German language could no longer be expected to be understood the way it was when the *Jahrbuch* was inaugurated in 1948.

### **3. Structure and contents of the *Jahrbuch*/GYIL**

The developments sketched out so far are also mirrored in the changes in structure and content of the *Jahrbuch*/GYIL over the decades. Two main trends can be detected which could be summarised as ‘internationalisation’ and ‘scientification’. The first of these trends is manifest in the gradual conversion to an English language publication and in the growing number of non-German authors and authors not linked to the Kiel Institute. As expressions of scientification, a shift can be seen from documentation and information to scholarly analysis, hand in hand with an expansion and internal differentiation of the essays section (‘Forum’, ‘Focus’, ‘General Articles’), as well as the introduction of international peer review standards.

#### **3.1 Articles**

Since its foundation, the *Jahrbuch*/GYIL has pursued the goal of providing its readers with academic essays and information on events and documents relevant to international law as well as on literature on international law, although in the course of its development it has pursued different focal points and internal differentiations. Scholarly articles can be found from volume 1 (1948) in the ‘Essays’ section. From volume 3 (1954) to volume 10 (1962), this section was divided into articles on general international law, private international law, international radio and broadcasting law as well as shorter articles. The latter addressed more technical problems, such as the execution of judgments by English courts in Germany,<sup>52</sup> or commented on specific court decisions;<sup>53</sup> however, they also included shorter contributions on more general topics.<sup>54</sup> As this subdivision was abandoned, so were contributions to private international law. In the GYIL, essays can be found in the ‘Articles’ section, named ‘General Articles’ since volume 43 (2000), and in shorter case notes and commentaries, labelled for some time as ‘Notes and

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<sup>52</sup> Bülck 1954.

<sup>53</sup> E.g. Münch 1959,

<sup>54</sup> E.g. Schultz 1954 on the Soviet conception of international law; Hecker 1955 on the international legal protection of children.

Comments' and 'Comments and Case Notes'. Since volume 38 (1995), each volume has had a thematic focus, under the section title 'Focus' since volume 39 (1996). Since volume 44 (2001), at the beginning of each volume, there is also a 'Forum' section which contains reflections on current international legal questions of somewhat greater import.

### *3.1.1 Number and Scope*

Over time, the size of the *Jahrbuch*/GYIL's essay section has steadily increased: from around 270 to 300 pages (1950s), through 350 (1960s), 400 (1970s) and 450 (1980s and 1990s), to an average of 500 pages (2000s). From 2009 onwards, the 'German Practice' reports (see section 3.2), which correspond in content and scope to the earlier 'Comments and Case Notes' section, have once again significantly increased the number of essays per volume and the scope of the sections that go beyond reports and documentation. Until 2009, the number of scholarly essays varied on average between 12 and 16 per issue, but since then it has totalled around 30 articles (in the 'Forum', 'Focus', 'General Articles', and 'German Practice' sections) with an average of 750 pages of text (with volume 53 (2010) reaching 1,010 pages).

### *3.1.2 In-House and External Contributions*

While the share of scholarly contributions to the *Jahrbuch*/GYIL has steadily increased over time, the number of authors affiliated to the Kiel Institute for International Law (and, in the earlier volumes, also to the Hamburg Research Centre), or who are otherwise close to it, such as alumni and former Ph.D. students, has tended to decrease. In the first 20 volumes, members of this group generally contributed three to six articles per issue, but in more recent years (excluding the 'German Practice' section) this has been, at most, a single article, and often none at all.

### *3.1.3 Domestic and Foreign Contributions*

From the beginning, foreign authors also wrote in the *Jahrbuch*/GYIL, partly in English or French. While contributions by non-German authors in the 1950s accounted for between a third and a half of the total, from volume 8 (1959) onwards the proportion fell to a few contributions (one to three) in each issue. A possible explanation for this development could be that – with the former Nazism- and war-related isolation overcome – no pressing need for

internationalisation was felt at the time within German legal scholarship (made plausible by comparable figures in the cases of *AVR* and *ZaöRV*), resulting in only occasional invitations to colleagues outside Germany. This trend was broken following the renaming of the *Jahrbuch* to the GYIL by a new generation of scholars with formative research experience in the United States.<sup>55</sup> Apart from some phases in which the rate was again between 30% and 50% (1981-1985, 1991, 1995), the majority of contributions from volume 20 (1977) and later generally came from foreign authors. After the share fell again from volume 44 (2001) onwards, the contributions of non-German authors have generally accounted for 60% to 80% of scholarly essays since approximately 2010 (again excluding the ‘German Practice’ section).

### ***3.2 Reports on Practice in International Law***

Reports on international legal practice can be found over the decades in various sections of the *Jahrbuch*/GYIL. The section ‘*Aus der Praxis*’ (‘From Practice’), later renamed ‘*Berichte*’ (‘Reports’), contains relevant judgments and the practice of international organisations and institutions, mostly over a reporting period of several years. In the GYIL, this is reflected in the ‘Reports’ section, whose contributions were mainly written in German even after the transition to English. From volume 36 (1993) onwards, an independent section on German practice in international law was established, known as the ‘German Section’ (or ‘German Law Developments’) until volume 52 (2009) when it was renamed ‘German Practice’. In the same year (2009), the traditional reports on the practice of international institutions were discontinued. This development indicates a change in the target audience: While at the outset one of the aims of the *Jahrbuch* was to make the ‘particularly fluid international legal material’ available to German academics, the switch to the English language has gradually brought to the fore the goal of familiarising international readers with processes in Germany relevant to international law. As stated by the Editors in 2009: ‘By presenting this section in English, the editors hope to raise international awareness of significant decisions made by the German legislature, executive and judiciary and stimulate discussion of German practice on the federal and state level outside Germany.’<sup>56</sup> Occasionally, conference reports and obituaries have also been included in the *Jahrbuch*/GYIL, some of which have appeared in ephemeral sections such as ‘*Umschau*’ (‘Review’) or ‘Commemoration’.

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<sup>55</sup> Wilhelm Kewenig (1934-1993) had obtained an LL.M. at Harvard Law School in 1967, Jost Delbrück (born 1935) at the Indiana University School of Law in 1960.

<sup>56</sup> Giegerich and Proelss 2009, at 635.

### **3.3 International Legal Materials**

Probably the most striking changes have taken place in the publication of international law documents in the *Jahrbuch*/GYIL. In view of their availability on the Internet, it is hardly surprising that the ‘Documents and Materials’ section (later named ‘Documentation’) no longer exists. Its demise, however, started earlier, due perhaps to publications such as *International Legal Materials*, edited by the American Society of International Law since 1962, which had become widely available in Germany and satisfied the need for mere documentation, while at the same time space was needed for the ever-expanding essays section. The last document published in the GYIL was the Palestinian Declaration of Independence in volume 31 (1988). In the first decades, documents had taken up a lot of space: In the 1950s, the documentation section accounted for about a quarter of the *Jahrbuch*, while in the course of the 1960s the ratio increased by about 50%. Around 1970, the documents section shifted to the research focus of the Kiel Institute under Eberhard Menzel: Volume 13 (1967) and volume 14 (1969) contain documents on international and regional arms limitation and arms control, documents on the Federal Government’s policy of détente and documents on international and national radio law as subcategories. Volume 14 (1969) also contains an extensive collection of international and national legal documents on the continental shelf, reflecting a focus on the recent judgment of the International Court of Justice (ICJ) in the *North Sea Continental Shelf Cases*,<sup>57</sup> with Menzel having belonged to, and having authored an expert opinion for, the German delegation. In the same volume, the focus on radio and broadcasting law also ended, most probably because the Kiel Institute had enough resources by then to operate without the help of its former partners. Occasionally, in addition to documents, tables<sup>58</sup> and lists<sup>59</sup> were published in the appendix.

### **3.4 Book Reviews**

In the first decades, book reviews, published under the heading ‘*Literatur*’ (initially with a separate section for radio and broadcasting law) or ‘Book Reviews’, also took up considerable space. The reviews are followed to this day by a list of unreviewed books sent to the Editors (under the heading ‘Incoming Books’ or ‘Books Received’). From volume 14 (1969) to the

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<sup>57</sup> *North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)*, ICJ, Merits, Judgment, 20 February 1969.

<sup>58</sup> See volume 14 (1969).

<sup>59</sup> See volume 13 (1967) to volume 15 (1971).

volume 30 (1987), individual reviews were regularly preceded by review essays on specific topics, usually written by members of the Institute's staff. From volume 15 (1971) to volume 22 (1979), reviews of works published in the series of the Institute for International Law can be found at the end of the review section. While most of the reviewers used to be members of the Institute's staff, the majority of reviews published in the GYIL nowadays are written by reviewers outside of the Institute, predominantly by non-German authors.

### ***3.5 Walther Schücking Lecture***

Volume 60 (2017) saw the addition of another section in the GYIL, namely that of the annual Walther Schücking Lecture in Kiel. The first lecture, 'Beyond War and Diplomacy: A Giant Step for Mankind',<sup>60</sup> delivered by Philip Allott, was followed in Volume 60 (2017) of the GYIL by a special section comprised of papers presented at the ensuing international Ph.D. workshop with Professor Allott: 'Towards Utopia – Rethinking International Law'.<sup>61</sup> The second in this series of invited guest lectures named, like, since 1995, the Kiel Institute of International Law, after its former director and the first German judge at the Permanent Court of International Justice, was delivered by Christine Chinkin, with her lecture on 'Women, Peace, and Security' being published shortly thereafter in Volume 61 (2018).<sup>62</sup> The third lecture, given by Alan Boyle, 'Progressive Development of International Environmental Law: Legislate or Litigate?', is due for publication in Volume 62 (2019).

### ***3.6 Outstanding Doctoral and Post-Doctoral Theses***

Volume 61 (2018) signified another substantial milestone for the GYIL, with the introduction of a new section: 'Outstanding Doctoral and Post-Doctoral Theses' (a catchier title is in planning). With the stated aim 'To draw attention to German scholarship in international law beyond the occasional book review and to support junior scholars from Germany [...] [i]t is meant as a forum in which authors of excellent doctoral or post-doctoral dissertations on international and European law at German universities can present their theses to a wider international audience.'<sup>63</sup> The first wave of such submissions led to the publication of seven English-language summaries of doctoral or post-doctoral theses, which are generally written in

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<sup>60</sup> Allott 2017.

<sup>61</sup> Theilen et al 2017.

<sup>62</sup> Chinkin 2018.

<sup>63</sup> von Arnould et al 2018, at 543.

German and awarded the highest grades. Examples from volume 61 (2018) include dissertations examining the use of comparative reasoning in constitutional jurisprudence,<sup>64</sup> the shifting structure and foundational principles of international law,<sup>65</sup> and the protection of human rights in the European and Inter-American regional systems.<sup>66</sup>

#### **4. Thematic Focuses in Hindsight**

The main thematic focuses of the *Jahrbuch*/GYIL can only be dealt with cursorily here. The aim is to offer an overview of the general choice of topics and the position on fundamental or current issues of international law and international relations for the period beginning with the early days of the *Jahrbuch* (for the first two volumes see section 1.2) up to the GYIL at the turn of the millennium.

##### ***4.1 Topics of the 1950s and 1960s***

After its ‘new start’ in 1954 (backdated to 1950/51), the *Jahrbuch* is characterised by a wide range of topics and diversity. It mixes reflections on fundamental and structural questions of international law with contributions on current topics. In the 1950s, for example, there were contributions on the Suez crisis, the *Saarfrage*, and the Sputnik crisis. In the 1960s, European Economic Community (EEC) issues were increasingly discussed, along with the issues of disarmament, security and defence, decolonisation and self-determination. Volume 12 (1965) contains a comprehensive documentation of the Cuban crisis of 1962. Volume 14 (1969), which pays tribute to the ICJ judgment in the *North Sea Continental Shelf Cases* in both the essays and documents sections, begins a continuous consideration of the international law of the sea, accompanying the Third United Nations Conference on the Law of the Sea, which began in 1973. It is therefore all the more surprising that the 1982 United Nations Convention for the Law of the Sea is not acknowledged *per se* in the GYIL, but only in a series of articles on individual topics over the following years. However, in December 1982 the Kiel Institute devoted a symposium to the ‘new Law of the Sea’, which was published in an anthology.<sup>67</sup>

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<sup>64</sup> Martini 2019.

<sup>65</sup> Rauber 2019.

<sup>66</sup> Vasel 2019.

<sup>67</sup> Delbrück (ed) 1984.

#### ***4.2 Topics of the 1970s and 1980s***

In the 1970s and 1980s, the selection of topics and stances sharpened the ‘critical’ profile of the *Jahrbuch/GYIL*. At that time, the *Jahrbuch/GYIL* had a reputation for not shying away from dealing with topical, and sometimes sensitive, political issues.<sup>68</sup> Such topics included global and regional peacekeeping, disarmament and nuclear weapons, East-West German relations,<sup>69</sup> international development law, and the New International Economic Order. Current events and decisions are usually taken into account quickly – as far as the production rhythm of a yearbook permits: the Vienna Convention on the Law of Treaties and the American Convention on Human Rights (both 1969) in volume 15 (1971), the definition of aggression of the United Nations General Assembly (1974) in volume 18 (1975), the *Nuclear Tests Case* before the ICJ (1974) and its *Western Sahara* Advisory Opinion (1975) in volumes 19 (1976) and 20 (1977), the (first) Turkish invasion of Cyprus (1974) in volume 21 (1978), and, in the same volume, the 1977 Additional Protocols to the Geneva Conventions of 1949. The Vienna Agreement on State Succession in Treaties (1978) is dealt with in volumes 23 (1980) and 24 (1981), the Convention on State Succession in Property, Archives and Debts (1983) in volume 26 (1983), and the Greenland Referendum on Resignation from the European Communities (1982) in volume 25 (1982). Volumes 26 (1983) and 27 (1984) deal with the Falklands conflict, while volume 27 (1984) devotes considerable space to the conflict between the United States of America and Western European States over the construction of a gas pipeline to Siberia (1981/82) – who is reminded of Nord Stream 2 in 2019 here? –, which is examined from various points of view.

#### ***4.3 Topics of the 1990s***

It is surprising that the upheavals in Central and Eastern Europe in 1989 and 1990 and the dissolution of the Soviet Union on 26 December 1991 find practically no echo in the GYIL. Volume 33 (1990) focuses on the EEC and integration in Western Europe. Volume 34 (1991) contains a marginal contribution to the role of the United Nations ‘after the Cold War’, and volume 36 (1993) contains a shorter report on the ‘two plus four process’. The conflicts in the Balkans after the disintegration of Yugoslavia do not extend beyond the ‘Reports’ section of the GYIL. In view of the dramatic political events of those years (and the numerous new questions of international law they posed), the GYIL here seems somewhat ‘out of touch’.

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<sup>68</sup> Hula 1973, at 711.

<sup>69</sup> The series of treaties with Eastern Europe is the subject of the ‘Focus’ section in volume 18 (1975).

Recurring themes of the early 1990s in the GYIL are environmental protection and human rights; however, clear focal points can no longer be identified. This changes with volume 37 (1994), which completely revolves around the Maastricht Treaty and the judgment of the Federal Constitutional Court. From volume 38 (1995) onwards, the new ‘Focus’ section provides a clear emphasis on further topics. It begins with the topic of migration, followed by GATT/WTO in volume 39 (1996), international law and domestic law in volume 40 (1997), international law and the Internet in volume 41 (1998), treaty law in the 21st century in volume 42 (1999) and cooperation in the Baltic Sea region in volume 43 (2000).

## **5. Going Glocal: The GYIL in the New Millennium**

### *5.1 Globalisation and Digitalisation as Challenges*

The GYIL has also changed since the year 2000: The ‘Focus’ section, introduced in 1995, enabled the Editors to identify topical issues of international law. Where these follow the hot topics in the discourse on international law or anniversaries, there are of course overlaps with other journals: the globalisation of the discourse does not make individual profiling necessarily easier. The Focus in volume 50 (2007) (‘Is There a German Approach to International Law?’) and the publication of contributions to the law of the sea symposium on the occasion of the 100th anniversary of the Walther Schücking Institute in volume 57 (2014), might stand out for individuality. The same overlaps with other German and non-German journals exist, by and large, with regard to the ‘Forum’ section that has dealt in recent years with topics like the Ukraine conflict (2015), the Paris Agreement on Climate Change (2016), the relationship between African States and the International Criminal Court (2017) and ‘The Trump Administration and International Law’ (2018).

A significant change took place in 2010 with the introduction of the peer review procedure. Before that, submitted and invited manuscripts alike had been reviewed internally by the Editors. Since 2010, the contributions to the ‘General Articles’ section have been subject to a double-blind review by external experts, while in the ‘Forum’ and ‘Focus’ sections authors in general continue to publish at the invitation of the Editors. Thus, the GYIL was the first of the Germany-based periodicals devoted to international law in general to adopt this global publication standard. Since the introduction of the peer review procedure and possibly causally linked to it, foreign-authored contributions now account for the majority of essays published in the GYIL, including in the ‘General Articles’ section, which is open to submissions.



While switching from German to English only in 1992 and introducing the peer review procedure in 2010 have significantly widened the GYIL's audience and impact, the next challenge ahead is to develop a consistent and up-to-date e-publication strategy. Questions of how to deal with making content freely available online on platforms such as SSRN today face numerous periodicals, and yearbooks especially. For example, what is the appropriate 'moving wall' for pay-only content of an annual publication? Having a small Germany-based publishing house as a partner, however, can pose further challenges in this respect as much as it offers the advantage of a direct line to the publisher.

### *5.2 Forward to the Past? Reclaiming the Local*

In a globalised discourse on international law and with a scholarly culture that has long been shaped by American standards, the combined effects of what we have called 'internationalisation' and 'scientification' obviously present a danger that an international law periodical might lose its profile. An interesting development is how visible (or invisible) the connection between the GYIL and its editing institution, the Walther Schücking Institute for International Law in Kiel, had become over time. This was largely due to the transformation of the GYIL from a forum predominantly for German international legal scholars speaking to an international audience to an international periodical on international law edited in Germany. Hand in hand with this process, the institutional home base of the GYIL faded out. While Eberhard Menzel frequently opened the *Jahrbuch* with his own lead essay, under the new structure the Editors have increasingly assumed the role of moderators who occasionally contribute an introduction or even just an introductory commentary. The 'Forum' section, introduced in volume 44 (2001), initially counteracted this development; in the first few years, as a rule, one of the Editors published their critical reflections on a current event. Since 2010, however, this section has also been written by invited authors. For several years, the 'German Practice' section was the strongest tie between content and editing institution. As in previous decades, these reports are written predominantly by members of the Institute's staff or by people who are otherwise associated to the Institute. The institutional link has become more visible, however, since the introduction of the Walther Schücking Lecture in 2017. Furthermore, the 'Focus' section of volume 61 (2018) built on papers presented at a symposium on 'International Health Law' co-hosted by the Walther Schücking Institute in Kiel, a practice that will be continued for future symposiums hosted by the Institute. Both steps have been taken deliberately by the current Editors to sharpen the GYIL's profile and individuality.

If these latest editorial decisions connect the GYIL more prominently with the Walther Schücking Institute, one question remains: How ‘German’ is the GYIL today? The ‘Focus’ or ‘Forum’ section may occasionally take up a ‘*typisch deutsch*’ theme; in general, however, they will reflect an internationalised legal discourse, perhaps with a somewhat higher percentage of contributions by German scholars than in periodicals published in other countries. Even more so, the ‘General Articles’, which are submitted in response to an international call for papers, cannot and will not strengthen the ‘German’ profile. Here, the GYIL presents itself as an ‘international’ periodical. Two sections, however, are specifically designed to present contributions to international law from Germany. For decades now, the ‘German Practice’ section has provided readers outside of Germany with information about relevant German practice in international legal matters, from court rulings to policy decisions. This has been recently complemented by the new section for thesis summaries in order to publicise research ‘made in Germany’. In a sense, with this editorial decision the present Editors want to build on the founding idea of the *Jahrbuch* and adapt it to the present state of international legal discourse, i.e. to make it clear that German scholarship on international law still has a part to play in the development of international law in the 21st century.

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