

# Comment

## History as a Problem? On the Historical Self-Perception of the Max Planck Institute for Comparative Public Law and International Law

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*'Stained with red paint'. Hartmut Schiedermaier, Michael Bothe, Karl Josef Partsch, unknown, Kay Hailbronner 1975 in the Alte Aula (photo: MPIL)*

In 2024, the Max Planck Institute for Comparative Public Law and International Law (MPIL) will celebrate a century of excellence in legal research. Indeed, it can look back on 100 years of eventful history. It is a pivotal moment in the Institute's academic, but also political and historical trajectory. The way in which this pivotal moment is celebrated says a lot about the identity and sociological anchorage of the Institute. Interestingly, the forthcoming centenary differs significantly from previous celebrations. For the first time, it explicitly addresses the institution's troubled past, namely the Nazi period. My presence at the Institute as a contemporary historian who has been tasked to research on the MPIL and its predecessor, the Kaiser-Wilhelm-Institute (KWI), demonstrates this willingness to engage constructively with history. This is in stark contrast to previous anniversaries where history was not invited as a guest. As this comment will show, the Institute's attitude toward its history and the way it dealt with it reflects the respective zeitgeist. Until the 1990s or even 2000s, the Nazi past was generally avoided in German (academic) discourse – and the MPIL is no exception.

When I started working at the Institute, I assumed that there were practically no sources for the period before 1945. It was said that everything had been burnt when the Berlin Palace, which housed the Institute at the time, was hit by a bomb in 1945. However, I found a considerable amount of correspondence, administrative files and legal opinions in the Institute's cellar, which give an impression of the life at the institute during the war and the Nazi era. On the basis of these new insights, I would like to turn my attention to how the Institute dealt with the elephant in the room on previous anniversaries: National Socialism.

## I. 1975: An Anniversary (Almost) Without History

My first impulse was to look at how the Institute had celebrated previous anniversaries. I soon found references to the 50th anniversary, which was celebrated in 1975. The Institute, which was founded in Berlin in 1924 as part of the Kaiser Wilhelm Society (KWG), had already lived through five eventful decades. Beginning with the dispute over the Treaty of Versailles and the consequences/aftermath of the First World War, the KWI continued as a legal research organisation through the Third Reich and the Second World War. After the destruction of its premises in the Berlin Palace in 1945, the Institute made a new beginning in Heidelberg in 1949. As an advisory centre for international law close to the government, the Institute followed/monitored the occupation and division of Germany and the East-West conflict. It also actively promoted the integration of the Federal Republic of Germany into

the West, European integration and the consolidation of human rights. In 1975, the Institute and its staff have been involved in accompanying many historical decisions for 50 years. I thus expected to find one or two Institute publications or a *Festschrift* on the research institution. What I found surprised me. A more than 650-page special edition of the Institute's journal, the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (ZaöRV) was published to mark the anniversary.<sup>1</sup> However, none of the 18 articles dealt with the history of the Institute or even touched on it. All that was published on this subject for the anniversary were two thin booklets that ignored the vast majority of the Institute's eventful history.<sup>2</sup>

This finding which might seem boring at first blush, is indeed very interesting for a historian like me. Not only had I expected great interest in the Institute's important and eventful history at the occasion of its anniversary, but I had also assumed that the political debates in the aftermath of 1968 would have led to critical questions (about the Institute). Although the protests of the student movement had a long-lasting effect in Heidelberg, and Karl Doehring, a member of the Institute and later its director, was even at the centre of student criticism, they seem to have had little effect on the Institute.<sup>3</sup>

So I took a closer look at how the anniversary was celebrated in 1975. As is usual in academic circles, a large-scale three-day colloquium was held to mark the 50th anniversary. The subject of the colloquium, 'International Law as a Legal Order' ('Völkerrecht als Rechtsordnung'), was by no means chosen by chance, as it referred to the programmatic essay by the founder of the Institute, Viktor Bruns, with which he introduced the first issue of the ZaöRV in 1929.<sup>4</sup> A total of nine presentations were given at the colloquium, none of them dealing with the history of the Institute

The colloquium was followed by a festive event in the Alte Aula of Heidelberg University. In addition to many active and former members of the Institute, prominent political and judicial figures were also present, such as the President of the Max Planck Society (MPG) Reimar Lüst or the President of the Federal Constitutional Court Ernst Benda. It was on this occasion that the Institute's history was first mentioned at the anniversary in

<sup>1</sup> ZaöRV 36 (1976).

<sup>2</sup> Max-Planck-Gesellschaft (ed.), *Berichte und Mitteilungen 2* (1975). Hermann Mosler, 'Das Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht', *Heidelberger Jahrbücher XX* (1976), 53-78.

<sup>3</sup> Karl Doehring, *Von der Weimarer Republik zur Europäischen Union. Erinnerungen* (Berlin: wjs verlag 2008), 137-151. Alexandra Kemmerer, 'Der katholische Helmut Ridder. Ausgangspunkte einer Spurensuche' in: Isabel Feichtner and Tim Wihl (eds), *Gesamtverfassung. Das Verfassungsdenken Helmut Ridders* (Baden-Baden: Nomos 2022) 37-64, 45-46.

<sup>4</sup> Viktor Bruns, 'Völkerrecht als Rechtsordnung I', ZaöRV 11 (1929), 1-56.

a speech given by Ulrich Scheuner.<sup>5</sup> As Chairman of the Board of Trustees and a member of the Kaiser Wilhelm Institute in the 1920s, Scheuner was familiar with the Institute and thus may have seemed predestined to discuss its history. On the other hand, there would have been alumni with more integrity who could have been entrusted with this lecture. In a way, however, Scheuner was a safe bet, for one thing was certainly not to be expected from a former Nationalsozialistische Deutsche Arbeiterpartei (NSDAP) and Sturmabteilung (SA) member with a respectable academic career after 1933: an overly critical view of the Institute's history.<sup>6</sup> Scheuner had not been an overly politically compromised former National Socialist, otherwise Mosler would not have invited him. Nevertheless, the speaker could have raised questions, especially among the younger staff. But as I was told by researchers working at the institute at the time, the Institute's history did not appear to have aroused much interest, while there was a certain reluctance on the part of the older staff to engage with it.

According to a conference report by Speyer administrative law expert Hartwig Bülck in the *Juristenzeitung*, the colloquium was well received. From today's point of view, it may appear somewhat puzzling that he said of Scheuner's lecture – without a trace of irony –:

'In our time, which is increasingly losing its historical sense, he [Scheuner] made it clear how an Institute whose research is dedicated to a political subject, despite all the light and shadows in the past and present, does not appear in an unfavorable light if it keeps free of ideologies and always remains committed to the cause.'<sup>7</sup>

However, the speaker was less pleased about other things: 'The old university building, which was recently renovated and shone in new splendour, was stained with red paint all over the stairwell.' University Rector Hubert Niederländer also apologised as host for the graffiti by protesting students with the words: 'What you see is intended as a mockery of the law, we have left it as a reminder and warning.' Bülck was relieved to realise that the Alte Aula itself 'was still all right'. In retrospect, Mosler was also very pleased with the anniversary and the celebratory speeches which 'resounded pleasantly in the ears of the jubilarian, as was to be expected on such an occasion'.<sup>8</sup>

<sup>5</sup> Ulrich Scheuner, '50 Jahre Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht', Max-Planck-Gesellschaft (ed.), *Berichte und Mitteilungen* 2 (1975), 25-35.

<sup>6</sup> For Scheuner's role in the Third Reich, see: Felix Lange, *Praxisorientierung und Gemeinschaftskonzeption. Hermann Mosler als Wegbereiter der westdeutschen Völkerrechtswissenschaft nach 1945* (Berlin, Heidelberg: Springer 2017), 259-261.

<sup>7</sup> Hartwig Bülck, '50 Jahre Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht', *JZ* 15/16 (1975), 496-498 (497).

<sup>8</sup> Mosler, 'Max-Planck-Institut' (n. 2), 78.

## II. History as Dissent or the Attitude Towards National Socialism as a Fundamental Problem

For a legal institution which, from the outset, saw itself as a practical and topical legal research centre, critical historical self-reflection may not necessarily have been an obvious choice. Historical, philosophical or generally humanities-based approaches to law were not practised at the Institute. Nevertheless, over the course of the last hundred years, there have always been occasions when the Institute has had to deal with its history. Not only were the Institute's anniversaries always celebrated, albeit usually only in a small circle, but academic commemorative publications and obituaries of long-serving academic members of the Institute were also moments of historical canon and narrative formation. Hermann Mosler (1912-2001) had the greatest influence on the Institute's historical self-perception. A member of the Kaiser Wilhelm Institute since 1937 and director of the Heidelberg Institute from 1954 to 1980, Mosler represented an important continuity between the institutions. He not only set the course with regard to the Institute's academic orientation, but also did so in a far more silent manner regarding the MPIL's historical self-image. My study of Mosler's writings has persuaded me that this orientation can still be felt today.

Indeed, as a result of this self-image, it took a long time before the Institute's trajectory became the subject of historical scrutiny. Until the 1990s, only a few smaller texts looked at the Institute's history, almost exclusively written by Hermann Mosler.<sup>9</sup> With the exception of an article by Ingo Hueck from 2000, the Institute's history between 1924 and 1945 has hardly been researched to date.<sup>10</sup> This only changed with the publication of Felix Lange's doctoral dissertation in 2017, which dealt intensively with the

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<sup>9</sup> Hermann Mosler, 'Aufgaben und Grenzen der organisierten Forschung des Völkerrechts. Zum 30-jährigen Bestehen des Kaiser-Wilhelm-/Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht' in: Boris Rajewski and Georg Schreiber (eds), *Aus der deutschen Forschung der letzten Dezennien. Dr. Ernst Telschow zum 65. Geburtstag gewidmet* (Stuttgart: Georg Thieme Verlag 1954), 258-266; Hermann Mosler, 'Geschichte des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht' in: *Jahrbuch der Max-Planck-Gesellschaft zur Förderung der Wissenschaften e. V., Vol. II* (1961), 687-703; Hermann Mosler, 'Aufgaben und Arbeitsweise des Instituts' in: *Max-Planck-Gesellschaft* (ed.), *Berichte und Mitteilungen 2* (1975), 7-21. Mosler, 'Max-Planck-Institut' (n. 2), 53-78.

<sup>10</sup> Ingo Hueck, 'Die deutsche Völkerrechtswissenschaft im Nationalsozialismus: Das Berliner Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrecht, das Hamburger Institut für Auswärtige Politik und das Kieler Institut für Internationales Recht' in: Doris Kaufmann (ed.), *Geschichte der Kaiser-Wilhelm-Gesellschaft im Nationalsozialismus. Bestandsaufnahme und Perspektiven der Forschung* (Göttingen: Wallstein Verlag 2000), 490-527.

biography and work of Hermann Mosler.<sup>11</sup> He also focussed on aspects from the National Socialist era that were particularly critical of the Institute.<sup>12</sup> By contrast, the chronicle of the Institute, which was published at almost the same time and was written by the Institute's former Director Rudolf Bernhardt and Karin Oellers-Frahm, omits the history of the KWI.<sup>13</sup>

The reason for the discomfort in dealing with the Institute's history lays, as already mentioned, in its role during the Third Reich. The Nazi's seizure of power had a concrete impact on the social structure of the Institute with its 25 employees. Several members of the Institute were persecuted because of their Jewish origins, such as Marguerite Wolff who was directly dismissed as a researcher in 1933, and Erich Kaufmann who was successively dismissed from his positions as co-editor of the *ZaöRV* and as academic member. Both finally had to emigrate, as did the Jewish former Institute members Hermann Heller, Gerhard Leibholz and Joachim von Elbe. Only Joachim-Dieter Bloch, who was a 'quarter Jew' from a racial ideological point of view, did not have to leave the Institute. The politically non-conformist Wilhelm Wengler was also able to remain at the Institute until 1944 despite numerous difficulties with the authorities.

But then, around 1933/34, loyal National Socialists joined the Institute. Kaufmann was replaced by Carl Schmitt as an academic member and by Berthold von Stauffenberg as co-editor of the *ZaöRV*. With Hermann Raschhofer and Herbert Kier, two emphatically nationalist jurists were brought to the KWI in 1933/34. As Ingo Hueck writes, Bruns himself adjusted the Institute to the signs of the times in anticipatory obedience.<sup>14</sup> This may have been motivated by the idea of protecting the Institute from being brought into line ('gleichgeschaltet'). However, I think that this also expresses the will to actively support German foreign policy even under the new circumstances. The Institute supported Nazi policy through its publications also aimed at foreign countries and continued to be indispensable in providing legal ad-

<sup>11</sup> Lange, *Praxisorientierung* (n. 6); Felix Lange, 'Zwischen völkerrechtlicher Systembildung und Begleitung der deutschen Außenpolitik – Das Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (1945-2002)' in: Thomas Duve, Jasper Kunstreich and Stefan Vogenauer (eds), *Rechtswissenschaft in der Max-Planck-Gesellschaft 1948-2002* (Göttingen: Vandenhoeck und Ruprecht 2023), 49-90.

<sup>12</sup> Felix Lange, 'Carl Bilfingers Entnazifizierung und die Entscheidung für Heidelberg – Die Wiederbegründung des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht nach 1945', *ZaöRV* 74 (2014), 697-732; Felix Lange, 'Kolonialrecht und Gestapo-Haft. Wilhelm Wengler 1933-1945', *ZaöRV* 76 (2016), 633-659; Felix Lange, 'Between Systematization and Expertise for Foreign Policy: The Practice-Oriented Approach in Germany's International Legal Scholarship (1920-1980)', *EJIL* 28 (2017), 535-558.

<sup>13</sup> Rudolf Bernhardt and Karin Oellers-Frahm, *Das Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. Geschichte und Entwicklung von 1949 bis 2013* (Berlin, Heidelberg: Springer 2018).

<sup>14</sup> Hueck (n. 10), 507.

vice.<sup>15</sup> This often led to balancing acts, which illustrate the complex and changing attitude of the German elite towards the Nazi regime during the course of the Third Reich.

Things became difficult for the Institute and its staff when it became clear that the German war effort would drive their country into the abyss. The Institute members Ernst Martin Schmitz, Berthold von Stauffenberg and Hermann Mosler, who were seconded to the High Command of the Wehrmacht or the Navy, were also confronted with the war crimes on the Eastern Front during their work. It seems that the majority of the Institute's staff, like many people who were reasonably clear-sighted, became increasingly sceptical or even hostile towards the regime.

As my intense exploration of historical correspondences and documents shows, the years 1942 to 1945 were particularly traumatic for the Institute and its members.<sup>16</sup> The deputy director and the director, Ernst Martin Schmitz and Viktor Bruns, died in 1942 and 1943 respectively. After internal power struggles broke out as a result of Bruns' death, the particularly party-loyal Herbert Kier denounced his colleague Wilhelm Wengler to the Gestapo for making a defeatist statement, Wengler was subsequently arrested and sent to the front.<sup>17</sup> The execution of Berthold von Stauffenberg, who had supported his brother Claus von Stauffenberg in the 20 June 1944 resistance movement, was particularly poignant for many employees, though there had been no consequences for the Institute itself. It continued its work unhindered. The destruction of the Berlin Palace, in which the Institute's premises were located, has also gone down as a traumatic event in the Institute's culture of remembrance.

### III. History in Transition or the Narrative(s) on the Reestablishment of the Institute 1949

Until the founding of the Max Planck Society as the successor to the KWG in 1948 and the reestablishment of the MPIL in Heidelberg in 1949, the Institute was in a state of uncertainty. Some of the Berlin staff had found

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<sup>15</sup> Hueck (n. 10), 503; Lange, 'Systematization' (n. 12), 546. Viktor Bruns, 'Der Beschluss des Völkerbundsrats vom 17. April 1935', *ZaöRV* 5 (1935), 310-332; Viktor Bruns, 'Die Tschechoslowakei auf der Pariser Friedenskonferenz', *ZaöRV* 8 (1938), 607-623; Berthold von Stauffenberg, 'Die Entziehung der Staatsangehörigkeit und das Völkerrecht. Eine Entgegnung', *ZaöRV* 4 (1934), 261-276; Berthold von Stauffenberg, 'Die Vorgeschichte des Locarno-Vertrages und das russisch-französische Bündnis', *ZaöRV* 6 (1936), 215-234.

<sup>16</sup> The following unpublished report by librarian Annelore Schulz is particularly impressive: *Die Rückführung unserer Institutsbibliothek aus der Uckermark nach Berlin-Dahlem, 1946.*

<sup>17</sup> Lange, 'Kolonialrecht' (n. 12), 654.

makeshift accommodation in the private home of the Bruns family, and parts of the Institute were housed in the villa of Bruns' successor Carl Bilfinger in Heidelberg. Carl Bilfinger, who – surprisingly – was reappointed as director in 1949, proved to be a political burden. Due to his obvious National Socialist writings, he had only been de-Nazified with difficulty. His person sparked the first debates about the Institute's position on its history, which were raised by former Institute members Gerhard Leibholz and Wilhelm Wengler, among others, who had vehemently protested Bilfinger's reappointment.<sup>18</sup>

For his part, Bilfinger gave an assessment of the reestablished Institute in the first post-war issue of the *ZaöRV*, published in 1950. Without even mentioning National Socialism, the Second World War or the numerous German crimes, Bilfinger criticised the treatment of Germany by the Allies. Against this, he positioned the Institute and its journal by equating the situation of Germany in 1950 with the historical founding situation of the Berlin Institute as a reaction to the Treaty of Versailles: 'The Institute's journal also finds itself in this respect in a new situation, which was already discussed after the First World War, but not fully clarified, in relation to an old question.'<sup>19</sup>

Even beyond Bilfinger's considerations, the 1950 issue of the *ZaöRV* represents an important moment of historical self-assurance for the Institute. The journal begins with a necrology of the members of the Institute who died during the war and post-war period. The selection of people commemorated and the way in which they are written about gives an impression of who the institution considered worthy of remembrance. The longstanding members Heinrich Triepel (1868-1946), Nikolai von Martens (1880-1947) and Wilhelm Friede (1900-1949) were commemorated. The obituaries for Berthold von Stauffenberg (1905-1944) and Joachim-Dieter Bloch (1906-1945) were of political significance. The Institute acknowledged Stauffenberg at a time when the conspirators of 20 July 1944 were still perceived as 'traitors to the fatherland' by large parts of the German population. Helmut Strebel even cautiously linked the Institute to the assassination attempt in his obituary.<sup>20</sup> Bloch, who had been killed by Soviet soldiers during the liberation of Berlin, was of comparable importance to Stauffenberg for the Institute's self-image. If a little of Stauffenberg's resistance splendour radiated onto the Institute, then Bloch was also suitable for a small resistance narrative for an Institute that offered protection to the politically oppressed.<sup>21</sup> Unlike Bloch, the other former members of the Institute who had been prosecuted for being Jews or for not being

<sup>18</sup> Lange, 'Entnazifizierung' (n. 12), 721.

<sup>19</sup> Carl Bilfinger, 'Prolegomena', *ZaöRV* 13 (1950), 22-26 (26).

<sup>20</sup> Helmut Strebel, 'Berthold Schenk Graf von Stauffenberg (1905-1944)', *ZaöRV* 13 (1950), 14-16 (16).

<sup>21</sup> Alexander Makarov, 'Joachim-Dieter Bloch (1906-1945)', *ZaöRV* 13 (1950), 16-18 (17).

aligned with the Nazi regime were not named or commemorated. In fact, the Institute's attitude towards its emigrated staff was very complex. Marguerite Wolff was consistently refused help after 1945 and Hermann Heller who died in 1933 was erased from the collective memory.<sup>22</sup> An open enmity even developed between Hermann Mosler and Wilhelm Wengler, who felt abandoned by Mosler and the KWI after his arrest in 1944 and blamed the Institute for this throughout his life.<sup>23</sup> Others, however, such as Gerhard Leibholz and Erich Kaufmann were tacitly rehabilitated. The institute also distanced itself from those who were clearly incriminated, such as Herbert Kier, who unsuccessfully endeavoured to be reinstated.

#### **IV. Keeping a Safe Distance from History: Highlights from the 30th, 40th, and 50th Anniversaries**



*The President of the Federal Constitutional Court Ernst Benda, University Rector Hubert Niederländer, Hermann Mosler and the Parliamentary State Secretary to the Federal Minister for Research and Technology Volker Hauff, Alte Aula 1975 (photo: MPIL)*

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<sup>22</sup> Personal file Marguerite Wolff, MPIL.

<sup>23</sup> Lange, 'Kolonialrecht' (n. 12), 658.

When Hermann Mosler took office as director in 1954, the Institute entered a new, present-orientated phase. During his time in office, a slow but noticeable change took place in the interpretation of the institute's history while an important reservation to actually deal with the institute's history persisted. This became clear on the 30th anniversary of the Institute in 1954, when the outgoing director Bilfinger and his successor Mosler each wrote a contribution about the Institute in a commemorative publication. The two contributions could hardly be more different. Bilfinger remained intellectually and rhetorically rooted in the mindset of the 1920s and called for a stronger inclusion of history in the Institute's future research programme. Although Mosler himself cultivated a strongly practice-oriented understanding of law, he also took up Bilfinger's call for a stronger integration of historical methods in international law, probably out of politeness and respect for Bilfinger. Compared to his later publications, Mosler's arguments were indeed very historical. The focus of his historical observations, however, was on the development of international law as a research discipline since the 19th century. He only briefly discussed the history of the Institute itself. Mosler described the founding situation in 1924 very matter-of-factly and refrained from taking offence at the Allies. On the contrary, he emphasised Germany's will at the time to integrate the international community. While Bilfinger saw the main merit of Bruns' Institute as having 'forced Germany's opponents to unmask their purely power-political standpoint', Mosler emphasised the 'independence and freedom of the Institute's work', which was 'free from the taint of tendentious one-sidedness'.<sup>24</sup> Mosler mentioned neither the First World War and any question of German responsibility, nor National Socialism and the Second World War. For Mosler, the core of the Institute's historical identity consisted of Viktor Bruns' research programme on international law and comparative law, the training of young academics and the provision of advice to authorities and ministries. Almost half of his contribution, however, focused on current and future challenges facing international law research and the Institute and can be read as the new director's programme.

Mosler dealt with the history of the Institute a second time in a short essay in 1961, on the occasion of the Kaiser Wilhelm/Max Planck Society 50th anniversary. Here, Mosler described the exact circumstances of the founding of the Institute in 1924, referring for the first time to the Treaty of Versailles as a 'peace treaty', he reiterated the importance of the 'integration of the

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<sup>24</sup> Carl Bilfinger, 'Völkerrecht und Historie' in: Boris Rajewski and Georg Schreiber (eds), *Aus der deutschen Forschung der letzten Dezennien. Dr. Ernst Telschow zum 65. Geburtstag gewidmet* (Stuttgart: Georg Thieme Verlag 1954), 29-32 (30); Mosler, 'Aufgaben' (n. 9), 260.

Weimar Republic into the community of states'.<sup>25</sup> As evidence of this, he cited Viktor Bruns' work as an international arbitrator before the Permanent Court of International Justice in The Hague. As in later publications, he referred in particular to Berthold von Stauffenberg's commentary on the Statute of the Court of 1934, in whose tradition Mosler saw himself.<sup>26</sup> He failed to mention that Stauffenberg was a great sceptic of the The Hague Court.<sup>27</sup> Mosler also addressed the Nazi era for the first time:

'The National Socialist era gradually and increasingly restricted the scope for action, but without destroying the scientific objectivity of the work. All employees who rejected the regime owed it to the skill of Bruns and the unwavering objectivity of Schmitz to have found refuge and the freedom to develop their research at the Institute. After Bruns's death, the distress grew. In the first years of the war, the Institute supported the efforts of academic member Berthold Schenk Graf v. Stauffenberg, who worked on international law issues in the High Command of the Navy (Oberkommando der Marine), and Graf Helmuth v. Moltke, who carried out the corresponding activity in the High Command of the Armed Forces (Oberkommando der Wehrmacht), to conduct the war in accordance with international law by providing advice and expert opinions. Both became victims of the terrorist measures that followed 20 July 1944. The agreement with Graf Stauffenberg to make the Institute available to the new Reich government after the overthrow remained unknown to those in power.'<sup>28</sup>

Mosler's description of that time went no further than what Helmut Strebel and Alexander Makarov had already said in their obituaries of Stauffenberg and Bloch in 1950. In Mosler's text National Socialism appeared as something that the Institute was confronted with purely from the outside. Mosler portrayed the Institute as a place of high-ranking academic research that remained unaffected by politics. He particularly emphasised Stauffenberg's role in the resistance. He also associated the Institute with the founder of the Kreisau Circle, Helmuth von Moltke, which is misleading as Moltke was never an employee of the KWI. Mosler mentioned that it was agreed with Stauffenberg to place the Institute at the service of a resistance government. Although such an agreement does not seem far-fetched to me, I have unfortunately been unable to find any sources that provide evidence of such a plan.

In January 1965, the Institute celebrated its 40th anniversary. To mark the occasion, an internal half-day colloquium was held on the 'Tasks and Meth-

<sup>25</sup> Mosler, 'Geschichte' (n. 9), 689.

<sup>26</sup> Mosler, 'Geschichte' (n. 9), 701.

<sup>27</sup> Thomas Karlauf, *Stauffenberg. Porträt eines Attentäters* (München: Blessing 2019), 124.

<sup>28</sup> Mosler, 'Geschichte' (n. 9), 696.

ods of the Institute' (*Aufgaben und Methoden des Instituts*). In a three-page report for the MPG, Mosler wrote that it was time to 'hold up a mirror of self-criticism and examine which ideas and plans from the founding period and the years of initial development had withstood the test of time'.<sup>29</sup> However, the self-critical examination of the Institute was of a purely technical nature. The main problems discussed at the conference were the loss of importance of German as an international academic language and internal institutional work processes. There was no introspective reflection or historical analysis of the Institute itself. The colloquium was followed by a festive 'Gesellschaftsabend' to which the President of the MPG Adolf Butenandt, the Rector of Heidelberg University Gallas and Federal Constitutional Court President Gebhard Müller were also invited. The keynote speech was given by Gerhard Leibholz, who was once again a frequent guest at the Institute after Bilfinger's death, on the subject of 'Constitutional Law and Political Reality' (*Verfassungsrecht und politische Wirklichkeit*).<sup>30</sup> The Institute was not touched upon in the lecture.

Ten years later, on the occasion of the 50th anniversary in 1975, Ulrich Scheuner's above-mentioned keynote speech on the history of the Institute was published in a small brochure by the Max Planck Society. Like Mosler in 1961, he described the Berlin Institute as a purely academic research organisation that had remained unaffected by political influences from the outset and even during the Third Reich. Like Mosler, he also emphasised the importance of Stauffenberg and Bloch for the Institute. However, in addition to a few friendly memories of Viktor Bruns, Heinrich Triepel, Alexander Makarov and Ernst Martin Schmitz, he mentioned that Erich Kaufmann, who died in 1972, was 'forced into emigration' but remained 'closely associated' with the Institute until his death.<sup>31</sup> What Scheuner did not mention were the reasons for Kaufmann's emigration, namely that he was of Jewish origin.

## V. From the Avoidance of History to Historical Research: a 21st Century Perspective on the MPIL

Hermann Mosler also wrote another text on the history of the Institute for the 'Heidelberger Jahrbücher' in 1976, which was his last published essay on

<sup>29</sup> Hermann Mosler, 'Vierzig Jahre Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht', *Mitteilungen aus der Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, 1-2 (1965), 32-34 (32).

<sup>30</sup> Gerhard Leibholz, 'Verfassungsrecht und politische Wirklichkeit', *Mitteilungen aus der Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, 1-2 (1965), 35-59.

<sup>31</sup> Scheuner, '50 Jahre' (n. 5), 29.

the subject. The article primarily deals with reflections on the history of international law, the development of the Institute's publication series and research tasks. Nevertheless, the article contains some nuances in its historical considerations. More explicitly than in his previous publications, Mosler sought to reinterpret the Institute's history in the context of its current challenges. He drew a line between the European and global integration of West Germany, which was accompanied by the MPIL, and the activities of the Berlin KWI. Although he cited the basic historical understanding of international law as an instrument for 'safeguarding the vital interests of the country', he emphasised that the numerous legal disputes resulting from the Treaty of Versailles had not been conducted between opponents, but between 'partners' (!).<sup>32</sup> It was also important for him to underline that the founding of the Institute 'from today's perspective should not be suspected of being a relapse into outdated nationalism'. It is doubtful whether the Institute's founder Viktor Bruns would have signed up to this interpretation. In any case, Bruns never spoke of 'partners' in the international community. Even if Bruns was concerned with the reintegration of Germany into the international community, it is clear that he and his colleagues Erich Kaufmann and Heinrich Triepel saw the enforcement of national interests as an essential task of international law.<sup>33</sup>

After the anniversary in 1975, Mosler did not comment on the history of the institute for 20 years. On the occasion of the Institute's 70th anniversary in 1995, which was only celebrated on a small scale, the then 82-year-old gave his last anniversary speech.<sup>34</sup> This now had the character of a contemporary witness report, describing personal memories from his time at the KWI in Berlin. He did not make any fundamental changes to his interpretation of the institute's history. Without being specific, he hinted at criticising some of the Institute's publications from the Nazi era. Nevertheless, according to Mosler, there was only one convinced National Socialist at the institute, Herbert Kier, who was shunned by all staff and was academically incompetent. Even if Mosler's last speech did not provide any fundamentally new insights into the particularly critical questions about the history of the Institute, they are an expression of the incipient change in the culture of remembrance in German society, which did not leave Mosler unaffected.

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<sup>32</sup> Mosler, 'Max-Planck-Institut' (n. 2), 64.

<sup>33</sup> Viktor Bruns, 'Vorläufige Denkschrift über das Institut für ausländisches öffentliches Recht und Völkerrecht für das Reichsministerium des Innern, Berlin 30.10.1925', Politisches Archiv des Auswärtigen Amtes Berlin (R 54245).

<sup>34</sup> Hermann Mosler, '70 Jahre Kaiser-Wilhelm-Institut/Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht 1925-1995', Nachlass Mosler, AMPG, III. Abt., Rep. 191, Nr. 105.

2024 will mark another anniversary for the Institute, when it can look back on a hundred years of work. Instead of organising a few ‘pleasant-sounding’ celebratory speeches as in 1975, this time the focus will explicitly be on the history of the Institute, its achievements and its staff. Beginning with Felix Lange’s works, the Institute has become the subject of historical research in recent years. Since February 2023, a seminar series has been held once a semester taking a variety of academic and interdisciplinary perspectives on the Institute and its research. While the first seminar dealt with methodological questions of academic and institutional history, the second seminar focused specifically on the history of the Institute during the Weimar Republic and the Third Reich. Two further events will follow in 2024, which will deal with the Institute’s history from 1949 to German reunification. An anniversary blog, <mpil100.de>, was launched in November 2023 as a forum to accompany the MPIL’s anniversary activities.<sup>35</sup> While the Institute’s approach to history shows that it has been shaped by one director in particular for decades, the blog is now intended to be a ‘kaleidoscope’ of many different perspectives. External academics and members of the Institute are invited to contribute to the blog; historiography is now inclusive and self-critical. Above all, however, the blog is an invitation to question traditional narratives and to create what the Institute has long lacked: an awareness of its history.

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<sup>35</sup> Philipp Glahé, Alexandra Kemmerer, MPIL100 – Beginnings of an Exploration, <<https://mpil100.de/2023/11/mpil100-beginn-einer-spurensuche/>>.

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