Editorial

Armin von Bogdandy/Anne Peters*

With this issue, the Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)/Heidelberg Journal of International Law (HJIL) enters the 93rd year since it was first published in 1929.[1] For almost a century, the ZaöRV served as a forum to disseminate scholarship, not least that produced at the Max Planck Institute for Comparative Public Law and International Law. Indeed, the journal mirrors the Institute's intellectual and political trajectory with its long and complex history. It is a bridge to a distant past, provides spaces for law-related discussions in a challenging present, and hopes to open avenues into unknown futures. Issue 1/2021 will be the first issue to appear open access. This implements the Max Planck Society's Berlin Declaration of 2003 which seeks to "realise the vision of a global and accessible representation of knowledge".[2] The turn to open access is also faithful to the Institute's mission to be a hub for legal scholars from all over the world. At the same time, the journal reinforces its commitment to publish relevant research by establishing a full-fledged double-blind peer review, in line with the academic standards in the field.

1. The Journal's Mission

The journal is a forum for discussing fundamental and current issues of public international law, European Union (EU) law, comparative public law, and occasionally topics in the domestic public law of EU member states and beyond. Its ambition is to publish contributions by authors from all over the world, with a wide gamut of scholarly methods and outlooks.

The ZaöRV publicises legal scholarship that uses a variety of approaches and methods. The journal particularly seeks to discuss controversial issues, in line with the Institute's commitment to problem-oriented foundational legal scholarship. The knowledge produced, the scholarly findings proclaimed and

* The authors thank Alexandra Kemmerer and Achilles Skordas for research and input, and Michael Ioannidis, Davide Paris, Mark Somos, and Richard Dören for helpful critique on a previous version of this editorial.

1 Due to an evolution of the system of numbering, issue 1 of 2021 now opens volume 81. The English title was added in 1989 (vol. 49).

2 <https://openaccess.mpg.de/Berlin-Declaration>, Declaration of 22 December 2003.

https://doi.org/10.17104/0044-2348-2021-1-1 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

defended in the pages of this journal are of course always provisional and subject to constant contestation and revision. Careful dissection, open discussions among many different voices, and espousing multiple perspectives and methods are essential to safeguard both academic integrity and to generate, disseminate, and share knowledge.

The journal is bilingual, English and German. It thereby continues to serve the German-speaking community and remains situated in German legal scholarship, with its traditions and path dependencies. At the same time, we seek to bring specific contributions of the German-speaking legal tradition – which are often better conveyed in their own language or even defy translation – to the attention of an international readership. All German pieces are made accessible to that audience through their English abstracts and translated titles.

2. The Journal's Legacy

This journal has, just like its institutional home, been part of European and German history, in good days and in bad days, in war and in peace.[3] Tragedies and crimes associated with the period of National Socialism – facilitated and promoted, defended and justified, ignored and concealed also by legal scholars – are part of the journal's legacy. This darker legacy cannot be erased or forgotten and serves as an admonition to remember and an encouragement for intellectual responsibility and critical engagement in the future.

In the first period of its history (1929-1944), the journal was, as was the Institute, very closely linked to government institutions, in particular the Auswärtiges Amt (Federal Foreign Office) and the military. In keeping with the tradition of the Kaiser-Wilhelm-Gesellschaft, which was an early home of the Institute, fine scholarship was sought in order to cope with the legal implications of the Treaty of Versailles and to stabilise the standing of Germany in the international community. The Institute's course under the

3 For the post-war history of the Heidelberg Institute, see Felix Lange, Zwischen völkerrechtlicher Systembildung und Begleitung der deutschen Außenpolitik – Das Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht 1945-2002, Preprint 10, gmpg, 2020. See also 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*, Vol. 2 (Göttingen: Wallstein 2000), 490-527.

 DOI 10.17104/0044-2348-2021-1-1

https://doi.org/10.17104/0044-2348-2021-1-1 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

swastika showed in the mutations of the journal's editorial board. Eminent scholars and practitioners from the Weimar era (among them Erich Kaufmann and Rudolf Smend) who had joined its editor-in-chief, Viktor Bruns, were gradually replaced. Heinrich Triepel stayed on and Carl Schmitt joined the editorial board in 1934, followed by younger, less prominent members of the Institute.[4]

In its overall national-conservative orientation, the journal never got entirely caught up in the tangle of National Socialist ideology and its most radical party structures and professional organisations.[5] The editors-in-chief, Viktor Bruns and, following his death in 1944, Carl Bilfinger, remained committed to the professional standards of the time. The editors also sought to uphold a certain autonomy of international law, as the Institute's first director, Viktor Bruns, had put it in his seminal "International Law as a Legal Order", the lead article of the inaugural issue of the ZaöRV in 1929.[6]

Berthold Schenk Graf von Stauffenberg became a co-editor of the ZaöRV in 1936/37. As a senior research fellow at the Institute, he had authored the first commentary on the Permanent Court of International Justice, but had also defended the infamous Law About the Repeal of Naturalization and the Deprivation of Citizenship (14 July 1933) in the pages of the journal.[7] Ultimately, he risked and lost his life as a central figure of the resistance group of 20 July 1944, contributing to the legal modification of the Nazi plan "Walküre-Befehle" for the effort to overthrow the regime. He was executed in the aftermath of his brother's failed attempt to assassinate Hitler. In 1951, he was honoured in the first post-war volume of the ZaöRV, when – with the

4 See Michael Stolleis, A History of Public Law in Germany 1914-1945 (New York: Oxford University Press 2004), 423-424 (German original: Geschichte des öffentlichen Rechts in Deutschland. Weimarer Republik und Nationalsozialismus (München: C. H. Beck 1999), 393-394).

5 See for a portrait of the ZaöRV 1929-1944: Andreas von Arnauld and Laura Kresse, 'Zeitschriften am Institut für Internationales Recht' in: Andreas von Arnauld (ed.), *Völkerrecht in Kiel: Forschung, Lehre und Praxis des Völkerrechts am Standort Kiel seit 1665* (Berlin: Duncker & Humblot 2017), 367-404 (376-379).

6 Only the first part of the two-part study appeared in issue 1: Viktor Bruns, 'Völkerrecht als Rechtsordnung', HJIL 1 (1929), 1-56; HJIL 3 (1933), 445-487.

7 Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (ed.), *Statut et règlement de la Cour permanente de justice internationale: éléments d'interprétation* (Berlin: Carl Heymanns Verlag 1934) (Stauffenberg is identified as author in the preface); Berthold Schenk Graf von Stauffenberg, 'Die Entziehung der Staatsangehörigkeit und das Völkerrecht', HJIL 4 (1934), 261-276. See for an analysis of this apparent contradiction: Wolfgang Graf Vitzthum, 'Berthold von Stauffenberg und das Widerstandsrecht' in: Frank-Lothar Kroll and Rüdiger von Voss (eds), *Für Freiheit, Recht, Zivilcourage* (Berlin: be.bra 2020), 145-174 (154-159).

https://doi.org/10.17104/0044-2348-2021-1-1 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

re-founding of the Institute in Heidelberg as a Max Planck Institute – a new era began also for the journal.[8]

After the Second World War, the ZaöRV became a forum for the re-constitution of German constitutional and international law scholarship. During the Cold War, both the Max Planck Institute and the journal discussed and explored, *inter alia*, problems relating to the integration of Germany in the Western community of nations and to the status of Germany, including the Ostverträge of the early 1970s. As Germany found itself at the dividing line between East and West, these questions were not only immediate objects of study but also heavily shaped the intellectual horizon and formed the context of legal research. At that period, the Institute often advised the German government in general and the Federal Foreign Office in particular on questions of international law, and the publications in the ZaöRV mirror that *Zeitgeist*. Hermann Mosler's article on "International Law as a Legal Order" used Bruns' title from 45 years before and inserted itself, with its both pragmatic and principled approach, into an intellectual tradition that had its origins in the establishment of the Institute by the Kaiser-Wilhelm-Gesellschaft in 1924, half a century earlier.[9]

The journal followed the very first moments of post-war European legal integration. Due to Hermann Mosler's active role as legal adviser in the drafting of the Treaty on the European Coal and Steel Community, the journal offered timely information and debate on developments in the law of the European Communities (later the European Union) and also on the European Convention on Human Rights.[10] Issues of transnational or even global constitutionalism based on an emerging acquis of human rights and fundamental freedoms, the quest for democratic legitimacy, and the delicate balance between national constitutions and supranational legal integration became and remain recurrent topics in the pages of the ZaöRV.

Comparative public law and the wider landscape of a Ius Publicum Europaeum have also been fields of exploration and analysis. The Institute is situated in the Karlsruhe – Strasbourg – Luxemburg triangle, not only geographically, but also in the practical work of its directors Hermann

8 See Helmut Strebel, 'In Memoriam – Berthold Schenk Graf von Stauffenberg (1905-1944)', HJIL 13 (1950/51), 14-16.

9 Hermann Mosler, 'Völkerrecht als Rechtsordnung', HJIL 36 (1976), 6-49; Hermann Mosler, 'The International Society as a Legal Community' in: *Collected Courses of the Hague Academy of International Law*, Vol. 140 (The Hague 1974), 11-318.

10 Hermann Mosler, 'Der Vertrag über die Europäische Gemeinschaft für Kohle und Stahl. Entstehung und Qualifizierung', HJIL 14 (1951), 1-45; Hermann Mosler, 'Begriff und Gegenstand des Europarechts', HJIL 28 (1968), 481-502.

https://doi.org/10.17104/0044-2348-2021-1-1 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

Mosler,[11] Rudolf Bernhardt,[12] Jochen Abr. Frowein[13] and Helmut Steinberger,[14] and of many alumni and alumnae. The interaction between member states and European courts continue to be regular topics, just as the impact of European developments on other regional and universal systems of human rights protection, and vice versa.

The end of the Cold War, the peaceful revolution in East Germany of 1989, and the accession of the German Democratic Republic to the Federal Republic realised not only the German unity but also marked a profound transformation of the entire international community. Reading the ZaöRV of 1991, we can appreciate the contribution of German legal scholarship in the drafting of the complex framework of agreements that reshaped the constitutional architecture of Germany and its European neighbours within a very short period of time. The journal might have even helped creating the foundations of post-Cold War Europe. It certainly reflected the transition to an era of accelerated globalisation which now might again have reached a turning point.

During the last seventy years, the Institute and the ZaöRV have sought to be open to the global community of scholars. Apart from the directors of the Institute and generations of staff researchers, alumni and alumnae, scholars from many regions of the world have published in the journal. Several generations of senior scholars or professors served as managing editors (Schriftleitung), thus shaping the journal's profile and agenda. In more recent times, research fellows have served on the advisory board, have contributed to quality control, and have given crucial input for reform of the journal right up to the decision to go open access.

3. The Journal's Future

The new open access policy of the ZaöRV/HJIL is our contribution to the common endeavour of achieving an "open science", a solid backbone for a free and diverse global academic community, in line with the efforts of many other stakeholders on the national, European, and international levels.[15] At the same time, we are adapting our academic quality controls to contempo-

11 Judge at the European Court of Human Rights (ECtHR) from 1959-1980 and at the International Court of Justice (ICJ) from 1976-1985.

12 Judge at the ECtHR from 1981-1998, serving as the Court's President for seven months before his retirement necessitated by the Court's reorganisation in 1998.

13 Member of the European Commission of Human Rights from 1973-1993.

14 Judge at the German Federal Constitutional Court from 1975-1987.

15 Cf. CESCR, General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/25, 30 April 2020, para. 49.

https://doi.org/10.17104/0044-2348-2021-1-1 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

rary expectations by moving from our established practice of single-blind reviews to a full-fledged double-blind peer review system. We are also working towards indexation in the World Wide Web of science, to make scholarship more accessible.

Although the Internet has given rise to new formats of communicating research, it has also facilitated the proliferation of "fake" or guided information, and has made it more difficult to identify informed commentary. Against this background, academic journals that combine open access with a strong commitment to thorough review have a key role to play.

This relaunch occurs in a challenging period. Profound geopolitical changes with yet unclear outcomes are impacting on the structures of international order. With the optimism of the 1990s long gone, armed conflicts in many parts of the world (including Libya, Syria, Yemen, and Ukraine), the rise of "new authoritarianism", the erosion of democracies, growing cultural and religious polarisations, and aggravated geopolitical antagonisms between the United States, Russia, and China are prompting legal and political reconfigurations. New political movements – from the Arab Spring through Fridays for Future to the Umbrella Movement in Hong Kong – express the desire for a change of legal and political structures and institutions. Yet, recurring financial crises, globalisation fatigue, challenges of global migration, a possible ecological disaster, and the clarion call of the ongoing pandemic have created a sense of deep insecurity, which international and comparative public law need to address.

Engaging with postcolonial critique and acknowledging the inherited Eurocentrism of our discipline (and hence of this journal), we are aware of the need to broaden the range of authors, and to actively seek and promote scholarship from contributors beyond Western academia, in all their diversity. We invite submissions from all regions and legal cultures and look forward to inspiring discussions on regional and global developments in their interconnections and contradictions. Diversity in scholarship means less consensus, more histories, more differences of opinion, and more discursive and substantive engagement.

With all this, it is our aim and ambition to reach broader audiences with interest in international, European, German and comparative public law, to feature scholarship and discussions of the Heidelberg Institute, and to engage with authors from all over the world. We are committed to further promoting the journal as an academic forum for the global community of legal scholars and practitioners, and scholars from other disciplinary backgrounds engaging with research in our fields. We aspire to make it contribute to free and informed intellectual exchanges across regional, cultural, epistemic, political, and, not least, legal differences.

 DOI 10.17104/0044-2348-2021-1-1

https://doi.org/10.17104/0044-2348-2021-1-1 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA