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Strengthening the World Order: Universalism v. Regionalism

Risks and Opportunities of Regionalization

Symposium held on the occasion of the 75th Anniversary
of the Institute of International Law Kiel, May 17 to 20, 1989

Edited by

Rüdiger Wolfrum

Assistant Editors:

Denise A. Bizzarro

Tobias Stoll



Duncker & Humblot · Berlin

**Strengthening the World Order:
Universalism v. Regionalism**

**Veröffentlichungen des Instituts für
Internationales Recht an der Universität Kiel**

Herausgegeben von

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Institut für Internationales Recht an der Universität Kiel

111

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Foreword

In celebration of its 75th anniversary, the Institute of International Law at the Christian Albrecht University of Kiel held a symposium from May 17-20 concerning the advantages and disadvantages of regionalism. Twenty-five eminent scholars and diplomats met in Kiel and bestowed their knowledge and experience to consider both sides of this topic.

Whether the universality of international law should be strengthened or whether the progressive development of international law would benefit from its regional advancement has drawn the attention of international lawyers, especially in the 20th century. The debate still takes place on various, different levels. There were and are, for example, international law theory debates as to whether international law means a homogeneous legal order which is universally applicable or, whether regional international law has its own autonomous validity. The latter view has been advanced by believers in the pluralism of social and economic systems (adopted by States and their different cultural and historical backgrounds) and its appropriate reflection in an international law system which gives room to regional developments. The opposing view, however, emphasizes that States constitute a legal community based upon universally accepted law.

We have analyzed these views and taken into account the existing “antagonism” between the Universalist and the Regionalist camps.

We have asked whether it is possible to strengthen UN functions with regard to peace-keeping, the protection of human rights, and economic co-operation by regionalizing the relevant international rules of universal applicability.

We have posed the question of whether regionalism increases the efficiency of the United Nations. And, we have considered the degree of homogeneity required amongst the members of a region or group, so as to enable them to share common interests. Finally, we have pondered the relationship between international and regional norms.

The entire process and the result of our findings are included within this volume, part of the publication series of this Institute. We thank once again the Stiftung Volkswagenwerk, the Ministerium für Bildung, Wissenschaft, Jugend und Kultur des Landes Schleswig-Holstein, the University of Kiel, the Dr. Otto-Bagge-Gedächtnisstiftung, and the friends and promoters of the Institute, all of whom provided generous grants and without which the organization of the symposium and the publication of its proceedings would not have been possible.

Rüdiger Wolfrum

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Abbreviations

ACPs	= African, Caribbean, and Pacific Countries
AFDI	= Annuaire Français de Droit International
AJIL	= American Journal of International Law
ALADI	= Asociación Latinoamericana de Integración
ALALC	= Asociación Latinoamericana de Libre Comercio
APO	= Asian Productivity Organization
ASDI	= Annuaire Suisse de Droit International/Schweizerisches Jahrbuch für Internationales Recht
ASEAN	= Association of South-East Asian Nations
BGBI.	= Bundesgesetzblatt
BDGVR	= Berichte der Deutschen Gesellschaft für Völkerrecht
BYIL	= British Yearbook of International Law
CanYIL	= The Canadian Yearbook of International Law
CAP	= Common Agricultural Policy
CARICOM	= Caribbean Economic Community
CARIFTA	= Caribbean Free Trade Association
CoE	= Council of Europe
CCPR	= Covenant on Civil and Political Rights
CERN	= European Organization for Nuclear Research
CMEA	= Council for Mutual Economic Assistance (COMECON)
CSE	= Conference on Security and Cooperation in Europe
DAC	= Development Assistance Committee
EC	= European Communities
ECJ	= European Court of Justice
ECOSOC	= United Nations Economic and Social Council
ECOWAS	= Economic Community of West African States
ECU	= European Currency Unit
EEC	= European Economic Community
EFTA	= European Free Trade Association
EPA	= European Patents Authority
EPC	= European Political Cooperation
EPIL	= Encyclopedia of Public International Law
ESA	= European Space Agency
EuGRZ	= Europäische Grundrechte Zeitschrift
EURATOM	= European Atomic Energy Community
EUROCONTROL	= European Organisation for the Safety of Air Navigation
G-77	= Group of 77
GAOR	= General Assembly Official Records (of the United Nations)
GATT	= General Agreement on Tariffs and Trade

GSP	= Generalized System of Preferences
GYIL	= German Yearbook of International Law
HILJ	= Harvard International Law Journal
HRLJ	= Human Rights Law Journal
IAEA	= International Atomic Energy Agency
ICJ	= International Court of Justice
ICLQ	= International and Comparative Law Quarterly
ICSID	= International Centre on the Settlement of Investment Disputes
IDA	= International Development Agency
IFC	= International Finance Corporation
ILA	= International Law Association
ILC	= International Law Commission
ILM	= International Legal Materials
ILO	= International Labour Organisation
IMF	= International Monetary Fund
IO	= International Organization
LAFTA	= Latin American Free Trade Association
LAIA	= Latin American Integration Association
LDCs	= Less Developed Countries
MIGA	= Multilateral Investment Guarantee Agency
NATO	= North Atlantic Treaty Organization
NGO	= Non-Governmental Organization
NICs	= Newly Industrialized Countries
NIEO	= New International Economic Order
NILR	= Netherlands International Law Review
OAS	= Organization of American States
OAU	= Organization of African Unity
OECD	= Organisation for Economic Co-operation and Development
ÖZöRV	= Österreichische Zeitschrift für Öffentliches Recht und Völkerrecht
PTA	= Preferential Trade Area (for Eastern and Southern African States)
RdC	= Académie de Droit International, Recueil des Cours
RDP	= Revue du Droit Public et de la science politique en France et a l'étranger
RGDIP	= Revue Général de Droit International Public
RJPEM	= Revue juridique, politique et économique du Maroc
SADCC	= Southern African Development Coordination Conference
SARC	= South Asia Regional Cooperation
SEA	= Single European Act
SEATO	= South East Asia Treaty Organization
SPARTICA	= South Pacific Regional Trade and Economic Trade Agreement
UNCTAD	= United Nations Conference on Trade and Development
UNESCO	= United Nations Educational, Scientific and Cultural Organization
UNGA	= United Nations General Assembly
WEU	= Western European Union
ZaöRV	= Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

Opening Address

Rüdiger Wolfrum*

Your Excellency, Herr Abgeordneter, Magnifizenz, Herr Minister, Spektabilitäten, Dear Colleagues, Ladies and Gentlemen:

On behalf of the Institute of International Law at the University of Kiel, I want to extend a cordial welcome to all of you and to thank you for participating at this Celebration of the 75th Anniversary of the Institute of International Law. I perceive your participation as an endorsement and encouragement of the Institute's activities, for which I am grateful. Special thanks go to those of you who will address us in the course of this celebration, to the government of the State of Schleswig-Holstein for having supported the celebration of our anniversary and the following symposium and to the members of the newly established Advisory Board for their readiness to make their professional experience available to the Institute.

The fact that the Institute of International Law looks back at a seventy-five year period of activities allows for the casting of a retrospective glance just as it provides the opportunity for a prospective view upon the activities in the future.

The Institute was founded at the brink of the First World War. It is questionable whether this was a mere coincidence or whether the establishment of the Institute was already guided by the feeling that international relations needed a legal framework rather than leaving its development open for the free run of interests. *Theodor Niemeyer*, the founder of the Institute, suggested this idea — undoubtedly under the impression of the First World War — when he described the functions of the Institute in 1916. The First World War, the events which led to the Second World War and the Second World War proved him right. These events, however, have initiated substantive changes in international law, too. The number of actors shaping international relations has changed through the creation of new States and the foundation of international organizations. Equally the realm of international law has broadened. Apart from the preservation of peace, the protection of the environment, the use of the international commons, the communications among States and the economic interdependence of the States have become the major concern of international law. These problems represent a handful of the new challenges to the international community. They require a close co-operation

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among States which again results in a curtailment of the individual State freedoms with a view of satisfying the interests and needs of the community of States as a whole or at least their interests of neighboring States.

The Institute of International Law has dealt in the past with those problems just mentioned and will be confronted with them in the future.

Consequently, its activities focus on the problems of the preservation of peace, the international protection of the environment, the international telecommunication, the protection of human rights, the law of the sea and of the United Nations. One example to this extent is the symposium which will begin this afternoon. It deals with the question of whether the further preservation of peace, the protection of human rights, economic co-operation and the progressive development of human rights can best be pursued on a universal or a regional level; the question can be put differently, namely whether the integration of States pursued by the United Nations on a universal level has reached its limitation.

The dealing with the questions mentioned made it necessary for the Institute, too, to alter its methods of work. It is essential for the Institute to come into and to remain in contact with foreign international law experts. Thus, we are indebted to the University for having concluded various partnership agreements which allow the possibility of scholar exchange programs. Furthermore, it is necessary to maintain close ties with practitioners. The newly established Advisory Board combines both practical and scientific experience. Finally, it is mandatory to seek and to uphold a close co-operation with other disciplines, a policy which is continuously pursued by the Institute with a view toward the future.

It is a basic premise of the Institute to maintain enough flexibility so as to be in a position to respond to new developments. This is the key to its future success. I hope, that a sufficient foundation has been laid in this respect, so that in 25 years time, the Institute may suitably celebrate its one-hundredth anniversary.

Begrüßungsansprache

Jost Delbrück*

Your Excellency, Herr Minister, hochverehrte Festversammlung,

Ich darf einen Moment ausschließlich in die Rolle des Rektors der Christiana Albertina schlüpfen und bitte, mir nachzusehen, daß ich ein an sich nach bürgerlichem Recht unzulässiges „Insichgeschäft“ vollziehe. Ich gratuliere dem Institut für Internationales Recht sehr herzlich zu seinem 75. Geburtstag im Namen der Universität, von Rektorat und Senat. Mit dieser Gratulation verbinde ich einen ganz herzlichen Dank für die in den vielen Jahren der Existenz dieses Instituts geleistete Arbeit, das nun mit seinen 75 Jahren fast ein Viertel der Existenzzeit unserer Universität mitbegleitet hat bzw. Teil des Ganzen gewesen ist. Wir denken in dieser Stunde mit Dankbarkeit an jene großen Gelehrten, die dieses Institut vor und nach dem 2. Weltkrieg geprägt haben: an *Theodor Niemeyer* als Gründer und *Walther Schücking* als engagierten Kämpfer für eine internationale Friedensordnung, die diesen Namen verdient, d. h. eine Friedensordnung unter dem Recht; denn Friedensordnung ist — was heute oft vergessen wird — nicht nur politische Ordnung, sondern eben auch rechtlich geregelte Ordnung! Aber wir denken auch an jene, die nach der schweren Zeit zwischen 1933 und 1945, in der das Institut eher Objekt — um nicht zu sagen sogar „Opfer“ — des Regimes gewesen ist, die damals drohende Auflösung des Instituts abgewendet und schon vor dem Ende des Krieges und des Regimes vorausschauend das Institut in seiner Substanz gerettet haben. Hier denke ich vor allen Dingen an *Hermann von Mangoldt*, der unter schwersten Bedingungen das von der Verlagerung und Zerschlagung bedrohte Institut hier in Kiel gehalten hat und seine Bibliotheksbestände durch eine kluge Auslagerungspolitik gerettet hat. Aber auch an *Eberhard Menzel*, der mit einer unnachahmlichen Handschrift und einem großen Ideenreichtum nicht nur Generationen von jungen Völkerrechtlern für sein Fach begeistert hat, sondern auch das Ansehen dieses Instituts weit über unsere Landesgrenzen hinausgetragen hat. Der Dank gilt aber auch — und das sei mir verziehen, wenn ich dies hier sage — dem derzeitigen geschäftsführenden Direktor, der dieses Erbe mitgemehrt und getragen hat, insbesondere in den letzten Jahren, wo ich ihm allenfalls abends gelegentlich zu einem Gespräch zur Verfügung stand, der die ganze Last der Gestaltung des Instituts und auch der Vorbereitung dieses schönen Festaktes und des Symposiums getragen hat.

* Prof. Dr. Jost Delbrück, Rektor der Christian-Albrechts-Universität zu Kiel und Direktor des Instituts für Internationales Recht an der Universität Kiel.