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The Future of International Law Enforcement New Scenarios – New Law?

Proceedings of an International Symposium
of the Kiel Institute of International Law
March 25 to 27, 1992

Edited by

Jost Delbrück

Assistant Editor:
Ursula E. Heinz



Duncker & Humblot · Berlin

**The Future of International Law Enforcement
New Scenarios — New Law?**

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

Herausgegeben von

Jost Delbrück und Rüdiger Wolfrum
Institut für Internationales Recht an der Universität Kiel

115

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Foreword

From the time of its inception, the Institute of International Law at the University of Kiel has concerned itself with the role and functions of law in maintaining international peace and security. This tradition was established under the guidance of *Theodor Niemeyer* — the founder of the Institute. It was forcefully carried on by *Walther Schücking* — the far-sighted protagonist of international organization as a means of maintaining peace and security in a conflict-ridden world. And it was taken up again after World War II by the first postwar director of the Institute, *Hermann von Mangoldt*, and his successor *Eberhard Menzel*, who not only contributed far-sighted ideas about a future European Security System in international legal and political terms, but also initiated the now established tradition of making the Institute a regular meeting ground for international legal scholars and representatives of national and international administrations. Problems of international security and peace have figured prominently in the agendas of the series of conferences of which the recent colloquium on the “Future of International Law Enforcement” is a part. The present volume, published under the auspices of the Kiel Institute, contains the papers and comments presented and the proceedings of this colloquium held from March 25-27, 1992 in the Senate Conference Room of the Christian Albrechts University at Kiel.

The end of the Cold War and the ensuing chances of the United Nations to live up to its role as it was envisaged by the United Nations Charter, i.e. to act as a central authority in the international efforts to maintain international peace and security, have once again focussed international interest on the perplexing problem of international law enforcement. In particular, the collective effort of the coalition forces, authorized by the United Nations Security Council, to fight the Iraqi aggression against Kuwait and restore peace and security in the Gulf area, has raised many questions as to the scope and limits of the authority of the United Nations to enforce international law. The critical signs of a destabilized post-Cold War international system and the renaissance of nationalisms in the wake of this dismemberment of the Soviet Union and Yugoslavia attributed a special sense of urgency to finding answers to these questions. It was the purpose of the Kiel colloquium to examine and discuss the prospects of a revitalized United Nations law enforcement authority — and possibly of regional arrangements to be charged with a similar authority — in the light of likely future conflict scenarios.

In the past, there has been concern about a growing divergence of views between the international law communities in the United States and in Europe

with regard to the function and role of international law in international relations, particularly with regard to the use of force in international law enforcement. As it is the firm conviction of the organizers of the Kiel colloquium that a transatlantic consensus with regard to these vital issues is indispensable, they believed that it was highly desirable to convene the conference under active participation of international legal scholars from both the European and the American side. The result of the exchanges during the conference has been encouraging, and there is agreement that this dialogue shall be continued in the future.

No colloquium can be successfully held without adequate funding. The Kiel Institute gratefully recognizes the substantial financial support granted by the Stiftung Volkswagenwerk, by the State of Schleswig-Holstein, and the Christian Albrechts University as well.

Kiel, September 1992

Jost Delbrück

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Abbreviations

AJIL	= American Journal of International Law
ASEAN	= Association of Southeast Asian Nations
CIA	= Central Intelligence Agency
CSCE	= Conference on Security and Cooperation in Europe
EC	= European Communities
ECOMOG	= Economic Community of West African States (ECOWAS) Cease-Fire Monitoring Group
ECOSOC	= Economic and Social Council
EEC	= European Economic Community
EPIL	= Encyclopedia of Public International Law
GA	= General Assembly
GAOR	= Official Records of the General Assembly
GATT	= General Agreement on Tariffs and Trade
IAEA	= International Atomic Energy Agency
ICJ	= International Court of Justice
ILC	= International Law Commission
IMF	= International Monetary Fund
Inter-Am.C.H.R.	= Inter American Commission on Human Rights
NATO	= North Atlantic Treaty Organization
OAS	= Organization of American States
OEO	= obligations erga omnes
OAU	= Organization of African Unity
OECD	= Organization for Economic Cooperation and Development
para(s).	= paragraph(s)
Res.	= Resolution
SC	= Security Council
Supp.	= Supplement
UNEF	= United Nations Emergency Force
UNHCR	= United Nations High Commissioner for Refugees
UNTAC	= United Nations Transitional Authority in Cambodia
v.	= versus
WEU	= Western European Union
ZaöRV	= Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

Opening Address

Jost Delbrück*

Ladies and Gentlemen, Dear Colleagues:

It is a great honor and a pleasure to welcome you on behalf of the Institute of International Law to this symposium which is part of the series of regular biannual symposia which we are holding in Kiel since 1964. Due to financial problems, this symposium, which was to be held at the traditional date in late November, had to be postponed to this late March 1992 date. Now we can gratefully recognize the financial support granted by the Volkswagen-Stiftung (VW Foundation) and by the Government of the State of Schleswig-Holstein. We are now able to have this symposium as usual, that is, we can extend to you the kind of hospitality which is, in a way, essential for a fruitful scholarly exchange and for which the Kiel symposia seem to have become notorious over the years.

We thank you very much that you have so readily accepted our invitations. Except for *Louis Henkin*, who was not able to cancel his commitments in New York and as a member of our Board of Advisers very much regrets not to be with us, all participants invited have made to Kiel. We gladly want to welcome the members of the Board who could attend. As a representative of the Board members we like to extend an especially warm welcome to *Sir Arthur Watts* who not only has become a frequent participant in our symposia but who has also served brilliantly as the President of the Phillip C. Jessup Moot Court during the German national rounds here in Kiel only a few weeks ago. We heartily welcome our colleagues from the United States who by their participation help us to achieve one of the main aims of this symposium, namely to engage in a much needed thorough dialogue between international lawyers from Europe / Germany and from abroad. At this point, I like to say a very personal “thank you” to Professor *Mary Ellen O’Connell* for her advice in drawing up the program for our symposium and who also helped in persuading our American participants to attend. We also warmly welcome our friends from the neighbouring countries (Austria, France and Switzerland) and from Germany — most of them “old hands” in participating in these symposia. Thanks to all of you for joining us! At this point, a first “thank you” goes to the Institute’s staff who made it possible that we are now assembled around this nice “round table,” literally speaking.

* Prof. Dr. *Jost Delbrück*, Director of the Institute of International Law at the University of Kiel; Professor at the Indiana University.

The symposium is devoted to a challenging topic as you may have seen and this may be one of the reasons that you have made your way to Kiel. To be serious now, the issues that we are confronting after the dramatic changes in the international system are highly complex and ask for our full attention as international lawyers. After the fall of the Berlin wall many people, particularly the Germans, thought that “eternal peace had broken out.” But then, within weeks of the first all-German federal elections, the Gulf crisis escalated into a military conflict. It found us unprepared. It took weeks before the German public realized that they were witnessing, for the first time, military enforcement of international law, i.e. the prohibition of aggression, by the organized international community of states, the United Nations. It was realized that the military action taken by the coalition forces was not yet another instance of lonely decisions of some governments to engage in the use of force, but rather an action authorized by the UN Security Council, and that this could very well be the beginning of a new era of the international community living up to the responsibility for international peace and security as it was written into the UN Charter in 1945. Although the German public ultimately approved of the action taken against Iraq by a similar percentage as in other European countries, the very idea that the United Nations might react in the same way in future confrontations raised a controversial debate here and elsewhere.

Would membership in the United Nations oblige members other than the Great Powers to active participation in *peace-making* operations? What would the scenarios be like which would induce the Security Council to decide in favor of military enforcement action in the future? If the response given to the Iraqi aggression really was the result of a renewed commitment to the enforcement of fundamental international legal principles such as the prohibition of the use of force, what would the reaction of the community of states be if the Security Council would be stalemated again? Was there an obligation of individual states or a given group of states to act outside the United Nations on behalf of the international community? And finally, would we have to react only to military threats *strictu sensu* or would other threats such as grave violations of human rights in a given state, or would major instance of willful destruction of the environment like burning oil wells or poisoning of water courses threatening international peace and security ask for collective — possibly forcible — reactions by the community of states? These were the kind of questions asked publicly and which started to be discussed among international lawyers. And these were the questions which persuaded us to look into the matter of international authority to enforce international law under the changed conditions of the international system at this symposium. The agenda of the symposium is one which asks us to face up to qualitatively different challenges from those posed during the Cold War. The challenges are qualitatively new ones, and they ask for innovative answers.

But there is more to the task we have set ourselves for this symposium. We want discuss the problems put in front of us with our American colleagues. We all know that time and again there has been a divergence of views and approaches between European and American international lawyers with regard to the question of what the proper role of international law is to be in international relations. In times of a rapid destabilization of the international system as we are witnessing it today, close cooperation and mutual understanding between the United States of America and Europe is essential at all levels. To contribute to this cooperation and to the promotion of mutual understanding is a major responsibility also of international lawyers. It is our hope that our meeting will establish a sound basis for fulfilling this task and for future exchanges.

In this spirit I welcome you to Kiel again. Let us hope for a rewarding exchange of ideas so that you will find it worth your while to have attended this symposium.

Now I should like to ask Professor *Wolfrum* to chair today's sessions.