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In memoriam  
PROFESSOR DR. WILHELM A. KEWENIG

\* 20. 6. 1934 — † 18. 6. 1993

On 18 June 1993, Professor Dr. *Wilhelm A. Kewenig*, LL.M. (Harvard), former director of the Institute of International Law at the University of Kiel, suddenly passed away shortly before his 59th birthday.

*Wilhelm Kewenig* was born on 20 June 1934 in Cologne. He studied law at the University of Bonn and at the American University of Beirut, Lebanon. He received a doctorate in law at the University of Cologne in 1962. His dissertation on „Die Koexistenz der Religionsgemeinschaften im Libanon“ (The coexistence of the religious communities in Lebanon) was the outcome of his previous stay and research at the American University. During the following years, *Kewenig* worked as a research assistant to Professor *Ulrich Scheuner* at the University of Bonn. The Bonn years, which had a decisive impact on his personal and scholarly development and which resulted in long lasting and close friendships, were considered by *Kewenig* as a particularly happy and rewarding period of his life. With the help of a research grant from the Deutsche Forschungsgemeinschaft (the German Research Council), *Kewenig* spent two years at Harvard Law School, where he not only received the LL.M. degree, but also prepared his post-doctoral thesis (Habilitationsschrift) on „Der Grundsatz der Nichtdiskriminierung im Völkerrecht der internationalen Handelsbeziehungen“ (the principle of non-discrimination in the law of international trade relations). Under the academic guidance of *Ulrich Scheuner*, *Kewenig* received his post-doctoral degree (Habilitation), and shortly thereafter (in 1971) he was appointed to the second chair at the Institute of International Law at Kiel University. He joined *Eberhard Menzel* in the directorship of the Institute which he had to carry on alone after *Menzel* fell seriously ill little more than a year later. As co-editor of the *Jahrbuch für Internationales Recht* he reshaped the Yearbook into what it has become, widely known and recognized as the German Yearbook of International Law. He also continued the series of biennial symposia which had been initiated by *Eberhard Menzel* and which have brought together German and international law scholars and practitioners ever since.

In a few years time, *Kewenig* had become an integral part not only of the Institute of International Law but also of Kiel University. In a politically turbulent

time, he was willing to stand for election as Rector of Christiana Albertina, his second academic home after Bonn University. He performed his duties with energy and courage and gained high recognition within and outside the University, and the respect of those who did not share his vision of the role of the university in a time of rapid social change. It was to no small extent his successful performance as Rector which determined much of his future professional life. After he had stepped down as Rector, *Kewenig* was called to serve on the Wissenschaftsrat (Federal Science Council), a deliberative body advising the government on science policies) and soon was elected to the chair of the Council. In 1979 he returned to the Institute of International Law and resumed his research and teaching tasks. During this period, he published several important writings on domestic broadcasting law, a field which formed a major research interest, as did international and constitutional law problems of the divided Germany, international economic law, and the legal relationship between Church and State. *Kewenig's* return to his Institute and chair did not last for long.

As early as the 1970s, *Kewenig* had joined the Christian Democratic Party. He did so out of a sincere sense of the scholar's responsibility to participate in the practical political process of his country. His service in important positions in a number of scientific-political organizations such as the Deutsche Gesellschaft für Auswärtige Politik (German Society for Foreign Policy) and Deutsche Gesellschaft für die Vereinten Nationen (German Society for the United Nations) was indicative of this sense of responsibility. In addition, he gained important experience in combining scholarly expertise with practical politics when he served in the party platform commission of the Christian Democrats and in the enquête task force of the Deutsche Bundestag regarding a reform of the Basic Law. Thus, already being involved in *rebus publicis*, it was, in a way, a logical step to agree to serve as a Senator for Science and Culture in the Berlin State Government under Regierender Bürgermeister (Mayor) of Berlin, *Richard von Weizsäcker*, in May 1981. This first appointment to a high political office was followed by two further appointments to the office of Senator for Science and Research and that of the Senator of the Interior of Berlin. When his party lost the state elections in Berlin at the turn of the year 1989/1990, *Kewenig* left politics altogether after eight years of active service. Yet he did not return to academia. Following the example of his long standing friend, *F. A. Mann*, he decided to become a lawyer. He joined the well known law firm of *Hengeler, Mueller, Weitzel, Wirtz* in Frankfurt / M., but remained in touch with academic life. He taught courses at Frankfurt University and in the years 1990 — 1992 he published several impressive articles in leading law journals on such topical issues as the future of the European Community, the International Tin Council, and legal issues related to the unification of Germany. Thus, *Kewenig* did not consider his new start in Frankfurt as a clear cut break with his professional past. Rather he saw it as challenge to weave together the different threads of experience, unfolding his rich intellectual and

personal capabilities in a new way. His sudden death has torn him away from his unfinished work. He will be sorely missed among his friends and colleagues.

*Jost Delbrück*



## Legal Craftsmanship and Political Vision: Wilhelm A. Kewenig's Contributions to the Doctrine of International Law

By Karl M. Meessen

*Wilhelm A. Kewenig* (1934-1993) had not been given much time, and some of the time he had been given was absorbed by public office. He served as chair of the German Council of Sciences and as senator in charge first of cultural and then interior affairs in the government of the city state of Berlin. And yet *Kewenig's* doctrinal contributions to international law, though less numerous than those to constitutional law, are worth remembering. They combine legal craftsmanship with political vision.

The takeover of the Portuguese overseas province of Goa by India in 1961 is today a nearly forgotten episode in the process of decolonization. Yet it gave *Kewenig* occasion for a first publication in which he discussed the need to institutionalize the process of peaceful change in situations that, perfectly legal at the time, are bound to change.<sup>1</sup> When he wrote that paper, he had largely finished but not yet published his dissertation on the religious communities in Lebanon.<sup>2</sup> His dissertation is an empirical study. To prepare it he spent a year at the American University in Beirut. The book reflects a profound understanding of the delicate balance of power between those independent communities that continue to make up the structure of a unique nation State. In his opinion, a study of the interaction of the religious communities in Lebanon also sheds light upon the then widely discussed principle of peaceful coexistence in the larger context of the East-West conflict.

Another early study, co-authored by *Thomas Buergenthal*, addresses a linguistic problem resulting from the wording of Article 6 of the European Convention on Human Rights.<sup>3</sup> The unofficial German translation of the term "civil rights", as contained in the official English version, referred to "claims of private law". *Kewenig* and *Buergenthal* rightly defended the breadth of the English text and

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<sup>1</sup> Goa und die Problematik des Peaceful Change, *Europa-Archiv* 17, 1962, 119.

<sup>2</sup> Die Koexistenz der Religionsgemeinschaften im Libanon, 1965.

<sup>3</sup> (with *Thomas Buergenthal*) Zum Begriff der Civil Rights in Artikel 6 Absatz 1 der Europäischen Menschenrechtskonvention, *Archiv des Völkerrechts* 13, 1966-67, 393.

found the equally authentic French text “droits et obligations de caractère civile” not necessarily to be to the contrary.

Major portions of his thorough study of intervention and the prohibition of the use of force presented at a symposium in 1971 were later confirmed by the Nicaragua judgment of the International Court of Justice in 1986.<sup>4</sup> Some issues, such as the legality of humanitarian intervention, are still open and much debated today. A decade later he returned to that subject, this time concentrating on economic coercion.<sup>5</sup> For a procedural corollary, one might mention his cautious examination of the Security Council’s right to adopt binding decisions on a basis outside Chapter VII of the Charter.<sup>6</sup>

His *Habilitationsschrift*, a second thesis to be presented in Germany to qualify for an academic career, was devoted to the principle of non-discrimination in the international law of trade relations.<sup>7</sup> Regrettably, only volume one was published. It focuses on matters of terminology and structure, and also explains the non-existence of the principle as a rule of customary international law. The manuscript of volume two, which was to deal with applications of the principle in the GATT and other treaty law, was never completed. A more recent publication on non-discrimination in European community law gives an idea of how fruitful a follow-up would have been.<sup>8</sup>

A number of symposia initiated, organized and published by *Kewenig* bear witness to the wide range of his interests in international law.<sup>9</sup> Yet, at least to a German observer, *Kewenig* is best known for his contributions to the analysis and discussion of the legal status of Germany.<sup>10</sup> In that discussion, which peaked in the early 1970s, issues of international law and constitutional law were closely interrelated. The events of 1989 and 1990 have now put most of his findings into the realm of legal history. Legal history, however, is of importance, and *Kewenig*’s studies will prove a reliable guide — easy to read and reflecting sound judgment.

<sup>4</sup> Gewaltverbot und noch zulässige Machteinwirkung und Interventionsmittel, in: Völkerrechtliches Gewaltverbot und Friedenssicherung, 1971, 175.

<sup>5</sup> Die Anwendung wirtschaftlicher Zwangsmaßnahmen im Völkerrecht, Berichte der Deutschen Gesellschaft für Völkerrecht 22, 1982, 7.

<sup>6</sup> Die Problematik der Bindungswirkung von Entscheidungen des Sicherheitsrates, in: Festschrift für Ulrich Scheuner zum 70. Geburtstag, 1973, 259.

<sup>7</sup> Der Grundsatz der Nichtdiskriminierung im Völkerrecht der internationalen Handelsbeziehungen, vol. 1: Der Begriff der Diskriminierung, 1972.

<sup>8</sup> Niederlassungsfreiheit, Freiheit des Dienstleistungsverkehrs und Inländerdiskriminierung, Juristenzeitung 45, 1990, 20.

<sup>9</sup> Cf., e. g., Die Vereinten Nationen im Wandel, 1975; Völkerrecht und internationale wirtschaftliche Zusammenarbeit, 1978.

<sup>10</sup> Cf., e. g., *K. Doebring / W. Kewenig / G. Ress*, Staats- und völkerrechtliche Aspekte der Deutschland- und Ostpolitik, 1971; Auf der Suche nach einer neuen Deutschland-Theorie, *Die Öffentliche Verwaltung* 26, 1973, 797; and numerous papers published in the influential political periodical *Europa-Archiv*, co-edited by *Kewenig* for many years.

## ARTICLES

### The International Rule of Law

By Sir Arthur Watts

#### I. Introduction

There is a little comfort to be derived from international crises, especially those involving resort to violence. However, some reassurance may be found in the readiness of international statesmen and politicians, in times of such crisis, to acknowledge the importance of the rule of law in international relations and to give it the emphasis which it merits but which, in more peaceful times, it often does not get.

Yet the rule of law is more easily invoked than understood. While its fundamental importance is acknowledged and usually taken for granted, it is not a concept with any readily identifiable content — which, of course, contributes to the ease with which it may be invoked, since doing so involves no commitment to any specific consequences. The idea of “law”, like that of “justice”, is so entrenched in modern political consciousness, internationally as well as internally, that “the rule of law” cannot be other than generally acknowledged as a desirable element of any community’s structure: the ambiguity of the concept does nothing to lessen the force of that general acknowledgment. The present purpose is to give some consideration to the possible specific content of the rule of law in the international community, and some evaluation of the extent to which it can be said that an international rule of law exists.

#### II. Two Preliminary Distinctions

##### 1. “Rules of Law” and “the Rule of Law”

The notion of the international rule of law needs to be distinguished from two associated ideas. First, “the rule of law” is something different from “rules of law”. A rule of law is a statement of what the law prescribes on some particular matter; and, collectively, *the rules of law* connote the body of particular rules comprising a legal system as a whole.