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FORUM

1914–2014 *NIEMEYER'S* INTERNATIONAL LAW REVISITED

Reflections upon Reflections: *Koskenniemi* on *Niemeyer*

ANDREAS VON ARNAULD*

In 2014, the Walther Schücking Institute for International Law in Kiel celebrated its 100th anniversary. Founded on the initiative of *Theodor Niemeyer* (1857–1939) as the first university institute of its kind – not only in Europe –, the Institute quickly established Kiel as a recognised centre for international law in Germany. In particular *Niemeyer's* successor, *Walther Schücking* (1875–1935, Director from 1926 to his dismissal for political reasons in 1933) raised the Institute to international renown. Indeed *Jean Spiropoulos*, *Paul Guggenheim*, *Walter Schätzel*, *Curt Rühlend*, *Fritz Münch*, and *Victor Böhmert* were working at the Institute during these years. After the National Socialist period – during which it was briefly renamed and restructured as “Institute for Politics and International Law” under the ardent National Socialist, *Paul Ritterbusch* – it was *Hermann von Mangoldt* (1895–1953) who actively undertook rebuilding the Institute from the desolate state it had reached at the end of World War II. It was he who, together with *Rudolf von Laun* (of Hamburg University) founded in 1948 the “German Yearbook of International Law” (then still under its German title as “*Jahrbuch für Internationales Recht*”). Succeeding (Co-)Directors of the Institute were *Eberhard Menzel* (Director 1955–1975), *Victor Böhmert* (1955–1971), *Wilhelm Kewenig* (1971–1981), *Jost Delbrück* (1976–2001), *Rüdiger Wolfrum* (1982–1993), *Rainer Hofmann* (1997–2004), *Andreas Zimmermann* (2001–2009), *Thomas Giegerich* (2006–2012), and *Alexander Proelss* (2007–2010). Especially *Eberhard Menzel* and *Jost Delbrück* in their long-lived tenures were influential in building the reputation of the Kiel Institute which bears the name of *Walther Schücking* since 1995.

* Professor of Law at Kiel University, and Co-Director of the Walther Schücking Institute for International Law.

To mark the occasion of the Institute's anniversary, the GYIL editors decided to devote the Forum Section not – as usual – to a current controversial issue of international law, but to a text written by *Theodor Niemeyer* in 1917, while World War I was still being fiercely fought in Europe. *Niemeyer* was probably most influential in his day as an initiator and organiser: Besides founding the Kiel Institute, he was a key figure in the establishment of the German Society of International Law and the German branch of the International Law Association (and, by the way, in the formation of Kiel's Philharmonic Orchestra). However, as a convert to the cause – he started out as a professor of Roman Law and turned to international law only after 1900 –, *Niemeyer* also published a series of “confessional” texts. In these he elaborated on his ideas of the role of international law and international legal scholarship. The most comprehensive of these texts is “*Aufgaben künftiger Völkerrechtswissenschaft*” (“Tasks of the Future Science of Public International Law”), published by *Duncker & Humblot* in 1917. In this work – which is presented in excerpts in an English translation here – *Niemeyer* displays a peculiar blend of pragmatism and idealism. His professed belief in the ‘idea of law’ (*Rechtsgedanke*) unfolding itself in an irresistible drive to ever more intensified cooperation between States might not be without an occasional Hegelian touch; still, it is not the work of a visionary or a philosopher. *Niemeyer's* text, however, is worth reviving as a period piece, providing us with a view on German international legal scholarship at the twilight of that ‘long 19th Century.’ Though denouncing legal positivism and supporting the idea of ‘speaking law to power,’ *Niemeyer* is far from being a utopian. This in a way marks him at the same time a typical and an atypical exponent of German legal scholarship at the dawn of the 20th century. The editors are fortunate that *Martti Koskenniemi* agreed to comment on *Niemeyer's* 1917 text. In his essay, *Koskenniemi* puts *Niemeyer's* thoughts in perspective and compares them (not always favourably, it has to be admitted) with *Max Weber* as the epithet of German scholarship around 1910. We are confident that our readers will enjoy some intriguing insights into these reflections upon reflections.

Tasks of the Future Science of Public International Law

THEODOR NIEMEYER*

§ 1: Yardsticks of Legal Science

I. The old question ‘does public international law exist’ will not be discussed here. The new question arising from the Great War ‘does public international law still exist’ will not be dealt with either. It will be accepted here as settled that there is no serious doubt that the answer to both questions is ‘yes.’

Public international law exists not only as a concept, but also in the sense of positive validity. Even the Great War has been unable to wear away at the concept of public international law, nor has it effected the collapse of public international law in spite of thousands of violations.

However, not everyone who shares this viewpoint will be readily prepared to affirm the question ‘does the science of public international law exist?’

The question is naturally not posed in such a way as to pass a judgement of value about the accomplishments of public international legal science up until now. Rather the question is directed at the concept and idea of public international legal science, or in other words, whether it is even possible.

A short understanding of particular fundamental presuppositions of this question is essential here.

In order to know whether the science of public international law exists in the identified way, we have to envisage on the one hand the essence of science and on the

* Originally published as “*Aufgaben künftiger Völkerrechtswissenschaft*” in 1917. Translation by *Nicholas English* (all footnotes omitted).