

53754
PL ISSN 0554-498X

**POLISH YEARBOOK OF
INTERNATIONAL LAW**

XI

1981-1982

POLISH YEARBOOK OF
INTERNATIONAL LAW

XI

ACADÉMIE POLONAISE DES SCIENCES
INSTITUT DE L'ÉTAT ET DU DROIT

ANNUAIRE POLONAIS
DE DROIT INTERNATIONAL

XI

1981—1982

OSSOLINEUM
MAISON D'ÉDITION DE L'ACADÉMIE POLONAISE DES SCIENCES

POLISH ACADEMY OF SCIENCES
INSTITUTE OF STATE AND LAW

POLISH YEARBOOK OF INTERNATIONAL LAW

XI

1981—1982

WROCŁAW • WARSZAWA • KRAKÓW • GDAŃSK • ŁÓDŹ

ZAKŁAD NARODOWY IMIENIA OSSOLIŃSKICH
WYDAWNICTWO POLSKIEJ AKADEMII NAUK

1984

EDITORIAL BOARD • RÉDACTION

JANUSZ SYMONIDES (EDITOR-IN-CHIEF), JERZY RAJSKI (DEPUTY EDITOR-IN-CHIEF), MARIA FRANKOWSKA (DEPUTY EDITOR-IN-CHIEF), RENATA SZAFARZ (SCIENTIFIC SECRETARY)

EDITORIAL COMMITTEE • COMITÉ DE REDACTION

LECH ANTONOWICZ, REMIGIUSZ BIERZANEK, MARIA FRANKOWSKA, ROMAN JASICA, MANFRED LACHS, WITALIS LUDWICZAK, JERZY MAKARCZYK, STANISŁAW NAHLIK, JERZY RAJSKI, JANUSZ SYMONIDES, JAN WITEK, KAROL WOLFKE, ANDRZEJ WASILKOWSKI, REMIGIUSZ ZAORSKI

ADDRESSES OF THE EDITORIAL BOARD •

ADRESSE DE LA RÉDACTION
INSTITUTE OF STATE AND LAW
INSTITUT DE L'ÉTAT — ET DU DROIT DE L'ACADÉMIE
POLONAISE DES SCIENCES
Nowy Świat 72
00-330 Warszawa

© Copyright by Zakład Narodowy im. Ossolińskich
Wydawnictwo, Wrocław 1984

PRINTED IN POLAND

Zakład Narodowy im. Ossolińskich — Wydawnictwo Wrocław. Oddział w Warszawie 1984 r.
Nakład 600 egz. Obj. ark. wyd. 26,00; druk. 21,00; Papier druk. m/gł. imp., kl. III 80 g 70×100.
Oddano do składania 28.03.83 r. Podpisano do druku we wrześniu 1984 r. Druk ukończono
w październiku 1984 roku w Białostockich Zakładach Graficznych. Białystok, Al. 1000-lecia
Państwa Polskiego 2. Zam. 690/83. M-24. Cena zł 260,—

Contents * Table des matières

Articles

ANNA MICHALSKA, Evolution of Codifications of International Human Rights and of the Doctrinal Foundations of these Codifications . . .	7
JANUSZ SYMONIDES, The Inviolability of Frontiers and the Territorial Integrity in the Treaties Between Poland and the GDR, Between Poland and the FRG and in the Final Act of the Helsinki Conference .	25
<u>JERZY JAKUBOWSKI</u> , The Establishment and Legal Status of International Economic Organizations of the CMEA Member-States	43
MARIA FRANKOWSKA, A propos des zones grises en matière d'engagements internationaux	75
REMIGIUSZ BIERZANEK, The Responsibility of States in Armed Conflicts	93
EWA BUTKIEWICZ, The Premises of International Responsibility of Inter-Governmental Organizations.	117
KRYSTYNA WIEWIÓROWSKA, The Problem of States' Responsibility in International Law for the Activities of Mass Media	141
TADEUSZ JASUDOWICZ, International Legal Problems of the Protection of the Marine Environment Against Land-Based Pollution	155
RENATA SONNENFELD, International Organizations as Parties to Treaties	177
MIECZYŚLAW SOŚNIAK, Les conflits dans le temps des règles de droit international privé	201

* * *

MACIEJ TOMASZEWSKI, Polish Court Judgements in International Civil Law Cases	219
ANDRZEJ W. WIŚNIEWSKI, Awards of the Court of Arbitration at the Polish Chamber of Foreign Trade in Warsaw	235

Book Reviews * Comptes-rendus

REMIGIUSZ BIERZANEK, JERZY JAKUBOWSKI, JANUSZ SYMONIDES, <i>Prawo międzynarodowe i stosunki międzynarodowe [International Law and International Relations]</i> — by Stanisław E. Nahlik and Andrzej Burzyński	243
ANDRZEJ CAŁUS, <i>Prawo cywilne i handlowe państw obcych [Droit civil et commercial des Etats étrangers]</i> — by Jerzy Rajski	248

GENOWEFA GRABOWSKA, <i>Prawo dyplomatyczne w stosunkach państw z organizacjami międzynarodowymi</i> [<i>Diplomatic Law in the Relations of States with International Organizations</i>] — by Jan Kolasa	249
JERZY JAKUBOWSKI, <i>Międzynarodowe organizacje gospodarcze krajów RWPG. Zagadnienia prawne</i> [<i>International Economic Organizations of the CMEA Member-States. Legal Problems</i>] — by Henryk de Fiumel	252
JAN KOLASA, <i>GATT — z zagadnień tworzenia i stosowania prawa handlu międzynarodowego</i> [<i>GATT — Problems of Creation and Application of the Law of International Trade</i>] — by Andrzej Całus	254
HALINA NIEĆ, <i>Ojczyzna dzieła sztuki. Międzynarodowa ochrona integralności narodowej spuścizny kulturalnej</i> [<i>The Proper Country of the Work of Art. International Protection of the Integrity of the National Cultural Heritage</i>] — by Stanisław E. Nahlik	258
<i>Odpowiedzialność państwa w prawie międzynarodowym</i> , red. Renata Sonnenfeld [<i>The Responsibility of States in International Law. Selected Papers, edited by Renata Sonnenfeld</i>] — by Karol Wolfke	261
RENATA SONNENFELD, <i>Uchwały Rady Bezpieczeństwa ONZ — zagadnienia prawne</i> [<i>The Decisions of the UN Security Council — Legal Problems</i>] — by Jan Kolasa	265
JANUSZ SYMONIDES, <i>Wychowanie dla pokoju</i> [<i>Education for Peace</i>] — by Andrzej Wasilkowski	267
JERZY TYRANOWSKI, <i>Sukcesja państw a traktaty w sprawie granic</i> [<i>The Succession of States and Treaties Concerning Boundaries</i>] — by Renata Szafarz	270
ANDRZEJ WASILKOWSKI (ed.), <i>Prawo międzynarodowe a prawo wewnętrzne w świetle doświadczeń państw socjalistycznych</i> [<i>International Law and Municipal Law in the Light of Experience of the Socialist States</i>] — by Witold Daniłowicz	274
KRYSTYNA WIEWIÓROWSKA, <i>Bezpośrednia telewizja satelitarna. Studium prawnomiędzynarodowe</i> [<i>Direct Broadcast Satellites. Study on International Legal Problems</i>] — by Jerzy Gospodarek	277
KAROL WOLFKE, <i>Międzynarodowe prawo środowiska. Tworzenie i egzekwowanie</i> [<i>International Environmental Law. Creation and Enforcement</i>] — by Remigiusz Bierzanek	272

Obituaries * Notes Nécrologiques

Jerzy Jakubowski (1930—1982) — par Andrzej Całus et Andrzej Wasilkowski	285
---	-----

Treaties * Traités

Principaux traités internationaux entrés en vigueur à l'égard de la Pologne en 1979—1980 — par Tadeusz Resztik	289
--	-----

Bibliography * Bibliographie

Polish Bibliography of International Law, 1978—1979 — compiled by Barbara Czeczot-Gawrakowa	295
---	-----

ARTICLES

POLISH YEARBOOK
OF INTERNATIONAL LAW
VOL. XI, 1981—1982
PL ISSN 0554-498X

Evolution of Codifications of International Human Rights and of the Doctrinal Foundations of These Codifications

by ANNA MICHALSKA

I. The First Treaties and Their Doctrinal Sources

International codifications of human rights have originated and developed in a somewhat different way than human rights' regulations which fall within the domestic legal systems of respective countries. Formulations of theoretical conceptions of human rights preceded their first catalogs in domestic law.

The postulate of the protection of fundamental human rights by norms of domestic law has arisen from the idea of natural law. This resulted in formulation of a definition of fundamental human rights and their catalog. Natural laws which stood above positive law were intended to establish the relations between a state and an individual.

The idea of international protection of human rights has also had its doctrinal source, although only initially, in the conception of natural law. It was to guarantee, by means of international law, a minimum standard of human rights to the individual by the state, under whose jurisdiction he remained. The conception of humanitarian intervention to some extent referred to the theory of natural law. It is worth remembering that a violation of fundamental human rights by the state, and not a transgression of the norms of positive law, was thought to be one of the conditions to be considered as rendering an intervention legitimate and justifiable. The theory of natural law was cited in order to define these fundamental laws¹.

The concept of humanitarian intervention has never been ranked as a principle of international law. It has remained a theoretical conception, not deprived of general and ambiguous wording. Some minimum standards of civilization whose violation would legitimize inter-

¹ A. ROUGIER, *La théorie de l'intervention d'humanité*, "Revue Générale de Droit International Public", 1910, p. 461 ff.; R. ARNCAU, *L'intervention d'humanité et la Déclaration Universelle des Droits de l'Homme*, "Revue de Droit International", 1955, No. 2, p. 127 ff.

vention by other states were indeed mentioned there, but these standards were left undefined. Yet there were various hierarchies of values adopted in various concepts of human rights, and the range of laws considered fundamental was not clearly delimited.

I am not of the opinion that the concept of humanitarian intervention can be treated as one of the sources of our modern system of international protection of human rights, which is based on respect for State sovereignty. The conception of humanitarian intervention, especially with regard to its ambiguity and lack of precision, could in fact threaten the conception of sovereignty. Besides, in practice, all cases of intervention justified by citing this conception were based on treaty provisions and were, to all intents and purposes, a form of forced regard for these provisions³.

Religious minorities were the first to fall subject to international protection. Although to a very limited extent, the freedom of religion has been guaranteed by peace treaties since the sixteenth century, and it was not associated as much with the recognition of the need for international protection of human rights as with the role played by the Church in those times and with the social function of religion⁴.

Gradually, national minorities have fallen subject to international protection. All the post-World War I treaties (with the exception of the Versailles treaty with the Germans) held provisions for minority protection. Moreover, the allied powers negotiated separate treaties with some countries regarding the protection of minorities⁵. The following principles were formulated: a) the universal protection of two fundamental freedoms: the right to life and the right to personal liberty for all inhabitants, without distinction as to nationality, race, language or religion; b) equality before the law and equal enjoyment of political and civil rights by all nationals; c) the rule of nondiscrimination: differences of nationality, race, language and religion should not be used to bar an individual from public employment, functions or honors, or from the exercise of trades and professions; d) freedom in the use of one's own national language in private intercourse, in commerce, religion, in the press or in other publications; e) freedom of religion

³ Various forms of humanitarian intervention are analyzed by Ch. G. FENWICK, *Intervention: Individual and Collective*, "American Journal of International Law," vol. 39, 1945, p. 647 ff.

⁴ A. VERDOODT, *Naissance et signification de la Déclaration Universelle des Droits de l'Homme*, Louvain-Paris 1964, pp. 10—13 and 36—40.

⁵ M. GANJI, *International Protection of Human Rights*, Geneva-Paris 1962, p. 15 ff.; K. SKUBISZEWSKI, *Zachodnia granica Polski* [Western Frontier of Poland], Gdańsk 1969.

and freedom of worship, so long as these practices are not contrary to public order or public morals. Separate public schools and instruction in minority languages were guaranteed by the treaties, as well as the right to establish cultural and social institutions and societies. International obligations of states with regard to the protection of minorities were adopted under guarantees of the League of Nations.

The appearance of new states on territories inhabited by minorities and the alterations of state borders resulted in the simultaneous signing of numerous minority treaties. The protection of human rights stipulated in these treaties was limited both territorially — as some countries were only bound by the treaties — and subjectively — as they applied just to some categories of persons. Therefore, the Minority Treaties could not be considered as an expression of tendencies to create a universal system for protection of human rights. The League of Nations' system of guarantees was judged as ineffective and its operation caused discontent of many states. Besides, the states bound by the treaties claimed that the protection system was not based on equal rights, and, at least in Europe, not all states came within its jurisdiction. The protection of minority rights has ranked neither as a principle nor as a norm of public international law. The pact of the League of Nations did not formulate a principle of international protection of human rights.

There were two groups of initiatives worth noting which were undertaken in favor of international protection of human rights before the establishment of the United Nations. First, the treaties aiming at abolition of slavery and the slave trade; secondly, the activities of the International Labor Organization. Thus, the termination of the most blatant manifestations of social injustice which could be accepted by neither any moral doctrine nor any concept of human rights began in public international law. This is the case with abolition of slavery and exploitation in labor relations, particularly of those social groups which were unable to oppose exploitation because of their economic weakness.

Before the establishment of the UN, international protection of human rights had a fragmentary character: only some categories of persons came within the scope of protection, and these were protected under a limited scale of rights having certain territorial limitations. There was no international convention which would oblige states to guarantee a minimum of rights to all persons who were subject to state jurisdiction, or at least to citizens. There was also no treaty that formulated a general principle of international protection of human rights. Proposals to include a principle of that kind in the Pact of the League of Nations were rejected.

The question arises here as to the reasons why the UN almost immediately after the end of World War II undertook steps in favor of creating an international system of human rights protection, while such efforts were, for all practical purposes, not undertaken before the war.

The reasons for the lack of interest in human rights before 1945 were numerous, interrelated and it would be difficult to list them all. In my opinion the most important are: 1) The absence of a dominant, universally-accepted concept of human rights. The liberal conception was in a state of crisis, and a new one suited to the socio-economic conditions of the time had not been worked out in place of the liberal concept. 2) The liberal concept of the state was going through a crisis as well. New roads for the development of the capitalist system were then being investigated. New principles describing the relationship of the base of the state to the individual were only at the early stages of elaboration, so the international community could not have been expected to pay more attention to that problem. 3) The Marxist concept of human rights, which at present has much influence on the content of international acts regarding human rights, was not popular at that time. Basically, there were no possibilities of presenting its postulates to the forum of the international community. 4) The international community was only partially organized. The League of Nations did not assemble all the states of the world, and its activities frequently met with sharp criticism. There were not many international questions then as to which different states could take an identical stance. 5) The colonial system prevented a substantial part of the world from having the possibility of deciding about its development directions and types of participation in international life. And it should be remembered that the Third World countries, particularly recently, considerably influence the content of international regulations on the question of human rights as well as in other areas. To sum up, the statement can be ventured that before 1945 there were simply no conditions for the birth of the idea of universal international protection of human rights. Thus, there were no conditions for transforming this idea into norms of international law.

II. The Idea of International Protection of Human Rights

Atrocities of World War II induced the international community to think of the necessity of undertaking measures to protect mankind from similar sufferings in the future. Therefore, some international acts

were formulated even during the war. They announced that future international law would be the *ius contra bellum*. A direct connection between securing peace and securing social justice was emphasized at the same time in the Philadelphia Declaration, as well as in other statements.

During the discussion concerning creation of the United Nations, the protection of human rights was mentioned as one of the tasks of the UN. Stress was laid, specifically in the UN charter, on the existing relationship between maintaining peace and security and providing appropriate economic conditions and fundamental human rights. The basic idea of the UN charter is that the protection of human rights is desired not only for humanitarian reasons, but that it is indispensable for maintaining world peace⁵. In a favorable international atmosphere the Universal Declaration of Human Rights was quickly decided on as the basis for the above foundations — the memory of wartime atrocities was still alive and the cold war period had not yet started. The Declaration was acknowledged to be the common standard achievement of all peoples and all nations. In many respects, the Declaration is worthy of being called a universal act. It was resolved upon by almost all members of the international community who were legally existent at that time. One can therefore assume that it voiced common aspirations and tendencies towards realization of the aims indicated in the Declaration. It is considered universal also because its provisions apply to all individuals, without distinction as to race, color, sex, language, religious-political or other opinions, national or social origin, property, birth, or other status (art. 2, passage 1). All people come within the domain of the Declaration irrespective of their citizenship or even of the fact of possessing citizenship; it is thus a catalog of human rights, and not only of the rights of citizens.

The Declaration Provisions are addressed to "all the people and all organs of a society" (preamble, art. 1, 2, 29), and not only to states. Some commentators think this fact to be "recognition that the international community does not consist of countries alone."⁶

⁵ A. VERDROSS, *Les idées directrices de l'Organisation des Nations Unies*, "Recueil des Cours de l'Académie de Droit International", vol. 83-II, 1953, p. 23 ff.; J. SYMONIDES, *Międzynarodowa ochrona praw człowieka [International Protection of Human Rights]*, Warszawa 1977, p. 92 ff.

⁶ R. CASSIN, *L'Homme sujet de droit international et la protection des droits de l'homme*, in: *La technique et les principes du droit public*, Paris 1950, p. 69. The international acts concerning human rights fostered the discussion on individual as a subject of international law. It is advocated in the literature of the socialist states, that individual is not a subject of international law and can

The scope of human rights covered in the Declaration was wider than the complex of rights guaranteed by domestic legal systems of respective states. The Declaration should not be considered as a mechanical collection of relevant constitutional provisions. It has been inspired by various systems of domestic law and by various doctrines. The question arises here whether the Declaration formulated a new universal concept of human rights, common to all the international community. This does not seem to be the case, however. At any rate, a universal common concept of human rights did not yet exist at the end of the forties.

Compromise opinions on the content of the respective provisions of the Declaration were based on various philosophical principles and arose from a variety of economic and political systems. J. Maritain, who was one of the philosophers most engaged in the preparatory work, wrote that people representing contradictory theoretical views were able to work out a strictly practical adjustment of the catalog of human rights principles, although an attempt to elaborate a common rationale for practical recommendations of everybody would have been hopeless.⁷ This opinion, although true to a considerable degree, seems too pessimistic. Numerous Declaration provisions can be interpreted in different ways, according to the concept of human rights adopted, the ideology or the socio-political situation. But there are also some provisions, like those regarding personal freedoms, which are not subject to various or seemingly too divergent interpretations. For it should be remembered that the substance of some rights and freedoms is a result of many years, or even many hundreds of years, of human thought; it is not simply a product of contemporary concepts of human rights. There is a visible influence of the natural law concept, where "the inherent dignity and equal and inalienable rights" are cited; but it would be difficult to agree with an opinion that the Declaration is "an expression of triumph" of the natural law doctrine.⁸ After all, the Declaration also

be protected not by norms of that law, but by norms of the internal law. I incline to the opinion of K. SKUBISZEWSKI who writes that "...international law enters between an individual and his internal law... Rights and liberties are more and more often guaranteed to an individual by international law irrespective of the provisions of internal law in this field." *Prawo Polskiej Rzeczypospolitej Ludowej a traktaty* [Polish Law and Treaties], "Ruch Prawniczy Ekonomiczny i Socjologiczny," 1972, No. 3, p. 4.

⁷ J. MARITAIN, *L'Homme et l'Etat*, Paris 1965, p. 67 ff.

⁸ R. BRUNET, *La garantie internationale des droits de l'homme d'après la Charte de San Francisco*, Genève, 1947, p. 23. The influence of the socialist doctrine on the Declaration contents, and the role played by the socialist states' repre-

refers to positive concepts, stating that "it is essential that these rights should be protected by the rule of law."

The Declaration is ascribed to the traditional non-Marxist catalogs of human rights of the era of liberalism (*laissez-faire*); but its essence is also evidence of the evolution which the non-Marxist concept of human rights underwent. Incorporation of socio-economic laws in the Declaration, although not to a large extent, proves that the conception according to which all steps undertaken with social equality in view were to be treated as a threat to the freedom of the individual, was finally transcended. Inclusion of socio-economic laws in the Declaration should also be recognized as a triumph of the Marxist concept of human rights. The Declaration holds concordant opinions that all categories of rights and freedoms are closely related to each other. This interdependence was emphasized in a concise but very accurate way by the Human Rights Commission: "while freedom must be safeguarded, man must also have the possibility of enjoying the fruits of his labor."⁹ It seems that the essence of the Declaration can be evaluated as a certain compromise between the non-Marxist and Marxist concepts of human rights. This compromise is based on finding common postulates for these doctrines. The further development of international codifications of human rights, for which the Declaration was a starting point, proves that some doctrinal agreement has been reached (not only a practical one, as J. Maritain wrote).

The Declaration is specifically grounded on principles which are characteristic of the systems of European civilization and culture. Asiatic and African concepts religious concepts like these of Buddhism and Islam which considerably influence social relations, ideological views and doctrinal concepts in numerous countries, are not taken into account. Thus it is sometimes criticized as being universal only in a European sense.¹⁰ This objection is justified to some extent: at the time of its formulation the Third World countries were weak and too few

sentatives in its making are described by J. MACHOWSKI, *Prawa człowieka* [*Human Rights*], Warszawa 1968, p. 44 ff.

⁹ U. N. Commission on Human Rights, 14th Session, U. N. Doc. E/CN.4/SR.609, p. 3.

¹⁰ L. DE VILLEFOSEE, *Géographie de la liberté*, in: *Les droits de l'homme dans le monde (1953—1964)*, Paris 1965, pp. 59—136; A. HUXLEY, *Les droits de l'homme et les données de la condition humaine*, in: *Autour de la nouvelle Déclaration Universelle des Droits de l'Homme*, Paris, 1949, pp. 166—170. The influence of the Declaration on internal law of numerous states is characterized by A. MICHALSKA in: *Podstawowe prawa człowieka w prawie wewnętrznym a Pakty Praw Człowieka* [*Fundamental Human Rights in Internal Law and Covenants of Human Rights*], Warszawa 1976, p. 182 ff.

to effectively express their point of view in the forum of the General Assembly. Besides, it has turned out in the course of years that the Declaration provisions substantially influenced the essence of the constitutions of these countries. On frequent occasions the Third World countries have expressed their attachment to the Declaration principles.

When assessing the Declaration, the question arises as to whether it encompasses all the rights of the individual that should be guaranteed in modern society. This question is extremely difficult to answer. It can only be done on the grounds of a particular concept of human rights. Since the Declaration did not originate in one common doctrine, its interpretations can be diverse.

Views on the types of values to be included among the fundamental human rights change. The evolution of these opinions is chiefly caused by social, economic and cultural changes, and, at present, mainly by the progress of science and technology and by their consequences. A constant increase of both social and individual needs generate new situations requiring new interpretations of human rights. Therefore, both international and domestic regulation of human rights should have a dynamic character. Consequently, the Declaration cannot be treated as a full and closed catalog of human rights. It is the first stage towards an international system for the protection of human rights; the creation of the complex of rights and freedoms included in it is a departure point for further work carried out by the UN. The complex of these rights and freedoms is entirely sufficient to give satisfactory direction to international efforts in favour of protecting human rights.

The Universal Declaration is a realization of the idea of international protection of human rights. Although it did not impose any legal obligation upon the states, it influenced the substance of international law as well as of the domestic law of numerous states.

III. Stages of Development of International Protection of Human Rights

1. Directions of International Codifications of Human Rights

One can differentiate between general and particular treaties among the treaties referring to human rights which were adopted by the UN. The aim of the former is to formulate general principles and a catalog of fundamental human rights. International Covenants on Human Rights are of this type. The latter apply to: a) one right or several interrelated rights; b) rights of a particular category of subject, e.g. women; c) a single aspect of human rights protection (e.g. prohibition of racial

discrimination); d) a particular domain of social relations (e.g. labour relations). Particular treaties were signed both before the adoption of the Covenants and after 1966.

The majority of particular conventions were implemented shortly after they had been resolved, while the Covenants waited almost 10 years to obtain the required number of ratifications. There are at least two reasons for this state of affairs. First, the Covenants required an exceptionally high number of ratifications, whereas it takes several, or in some exceptional cases a few more, ratifications for the implementation of a particular convention. Secondly, it is easier for states to be obligated to realize some of the rights rather than the whole set and wide complex of rights enclosed in the Covenants. Besides, there are several very ambitious formulations of certain rights in the Covenants which demand high standards from the states. Consequently, the Covenants are a long term policy task rather than a short run programme for many of the states which ratified them.

The function of the Covenants regarding particular conventions can be compared to that of a constitution in domestic law. Basically, particular conventions refer to the same rights which are mentioned in the Covenants. Naturally, I am not taking into consideration the chronology of resolution of respective acts. This is especially so since the substance of many conventions was inspired by discussions on the Covenants, and, conversely, provisions of these conventions influenced respective regulations of the Covenants.

The human rights contained in the Covenants cannot be viewed as forming a stable, closed catalog of human rights. On the contrary, the need for international protection of new human rights which are mentioned neither in the Covenants, particular conventions, nor in domestic legal systems is being stipulated in doctrine more and more often. Nevertheless, the UN and the past activities of specialized organizations have been aiming at a detailed development and precise formulation in conventions of the rights contained in the Covenants. On the other hand, the regulations of the Covenants, with the possible exception of some, are so generally formulated that it can be easily proved that all the conventions result from the development of these regulations.

The Covenants on Human Rights are not specifically listed among other human rights treaties as far as their legal power is concerned. On the contrary, the equality of all the treaties is emphasized in Article 5, point 2 of both Conventions, which states:

"no restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations

or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent."

Thus an individual demanding from a state the protection of rights contained in the international acts binding this state can always refer to an international legal instrument which provides him with better protection. The Covenants differ from particular conventions by virtue of their substance and formulation of respective rights. The Covenants formulate general principles, whereas particular conventions, by means of developing and precisely formulating the Covenants, function as quasi-executive acts. Therefore, the realization of particular conventions prepares the grounds for the full realization of the Covenants.

All international acts concerning the question of human rights belong together. Some of them can be distinguished as more or less important according to the philosophical or ideological principles adopted, or according to the kind of rights they are to protect and the socio-economic needs they are to safeguard. The resolution of the Covenants on Human Rights has terminated a certain stage of work on the international protection of human rights. Reaching agreement as to general principles is at the same time a point of departure for the further pursuit of this matter. The future in this field will be shaped by acts of particular conventions.

The resolution of the Covenants has also opened a new stage which is characterized by a change in the direction of interest as far as international protection of human rights is concerned. This evolution of international community opinion becomes apparent after comparing the substance of the Declaration and that of the International Covenants on Human Rights.

There are two basic directions of this evolution: the one of "collectivization" and the one of "socialization" of human rights. The recognition of nations' and people's rights to self-determination and to unrestrained control of natural resources, as well as the rules of minority protection are features of the first tendency. "Socialization" of human rights is manifested by the fact that no right to private property is taken account of, and by the expansion of rules concerning social, economic and cultural rights.

These changes have been partly brought about by the evolution of theoretical views on human rights. In my opinion, however, this was not a decisive factor. New directions in international protection of human rights were above all influenced by two factors: transformations of the world power system, and critical social, economic and cultural changes which are presently taking place in all societies.

Directly after the war personal and public freedoms as well as

public rights were the focus of interest of the international community. The substance of respective acts was still predominantly influenced by the liberal concept. This was a result of the existing international situation: the cold-war period isolated the socialist countries and Marxist ideology was not popular then. Emergence of independent countries after the disintegration of the colonial system was the crucial factor in the work concerning international protection of human rights. The following problems became essential: the right of peoples to self-determination, decolonization, and elimination of all forms of discrimination (particularly of a racial kind). The Third World countries became fervent adherents of socio-economic rights.

The concept of human rights which is being elaborated in the UN is of dynamic character. It is a resultant of the actual power arrangements in the world, the needs of the international community and, we might say, political and legal consciousness. The Covenants on Human Rights are a radical advance in comparison with the Universal Declaration: they reflect progressive changes which have occurred after the early period of the UN's activities.

The placing of a right to self-determination provision at the beginning of both Covenants significantly points to the international community's opinion today that the guarantee of this right is one of the indispensable conditions for realizing the rights of the individual. Adoption of this right also means a final departure from the individualistic conception of human rights. The question of human rights has thus been settled within the realities of socio-political life, and the abstract and isolated individual ceased to be its subject. The principle of self-determination of nations was formulated in the UN charter only as a goal of the Organization. The essence of this principle was precisely formulated in "The Declaration on the Granting of Independence to Colonial Countries and Peoples" and "The Declaration on Permanent Sovereignty over the Natural Resources". But it was only the Covenants on Human Rights which included it among the norms of international law. The wording of these principles was a result of the process of decolonization, aiming at the same time at further stimulation of decolonization and contribution to the consolidation of actual independence of newly established states.

The inclusion of minority protection rules also reflects the tendency to "collectivization" of human rights. These rules in conjunction with the provisions abolishing discrimination provide the national, religious and other minorities with stronger protection under their laws. The connection between the rights of the individual and the rights of a na-

tion or a group has been emphasized by the inclusion of the principle of self-determination along with minority protection rules.

The fact of the omission of a right to individual property in the Covenants, a right which was considered to be sacred and inviolable in the classical human rights doctrine, proves that the contemporary doctrine lays a different stress as far as the role and importance of respective human rights is concerned. The right to private property and the prohibition of its arbitrary deprivation were questioned by the developing countries, among others, in connection with their nationalization activities which were then under way.

Particular attention should be paid to the inclusion of an extensive catalog of socio-political rights in the Covenants. This caused substantial controversies and arguments during the drafting period.

The Covenants of Human Rights will be put into effect in states having various political and socio-economic systems on the basis of diversified ideologies, philosophies of life or religions. Therefore, there is a justifiable fear of their various interpretations and, in consequence, differences in observance and implementation. A system of international control can, to some extent, be a means to unification of interpretations of the Covenant, namely through recommendations of the Social and Economic Council and the Committee on Human Rights. In my opinion, it is particular conventions that play the most important unifying role. These conventions precisely formulate and develop the general provisions of the Covenants. They are less susceptible to different interpretations because their regulations are more detailed and specific. Thus, in my estimation, the signing of further conventions amplifying the provisions of the Covenants would be advisable.

2. New Tendencies in the International Protection of Human Rights

The substance of the Covenants on Human Rights reflects the progressive changes which have occurred in international relations since the early period of the UN's activity. It must be remembered though that the majority of Covenant provisions were generally shaped in the fifties. By emphasizing this fact, I do not want to say that the time of its resolution in 1966 was also the time when the substance of the Covenant had become outdated. It was an extremely progressive act; but some new tendencies which appeared at the beginning of the sixties in discussions on the international protection of human rights were not taken into consideration. Simultaneously, increased transfer to the arena of international bodies and discussion of some domains of state

activity resulted in growing necessity to develop further international cooperation.

These new tendencies in the international protection of human rights are: 1) increase of interest in socio-economic rights; 2) protection of human rights resulting from the development of science and technology; 3) problems of preservation of the natural environment, related to the question mentioned above. The evolution of views on the role and importance of respective human rights categories was significantly reflected during the course of an international seminar (organized in 1967 in Warsaw under the auspices of the UN) on the realization of the economic and social rights of man. Participating representatives of both capitalist and socialist states reached full agreement as to the necessity of guaranteeing those rights to the individual as well as of arriving at a far-reaching unity of views on the method of their implementation.

The Declaration on Social Progress and Development of 1969 is of considerable importance here. This was the first time that the UN took up the subject of social progress in such a complex way. The Declaration calls, among other things, for a full realization of economic, social and cultural rights, support for social reforms, and emphasizes the need for socio-economic development planning. Symptomatic of the evolution which occurred between 1948 and 1969 is the fact that a right to private property, which appeared in the Universal Declaration, is replaced in Article 6 of the more recent Declaration by a right to "social forms of ownership of land and of means of production, which would exclude any kind of human exploitation".

The Declaration has been described in the Polish literature as a "*sui generis* socialist manifesto". It emphasizes in its wording that social progress and development are a condition for the development of human rights; the realization of political rights is socially and economically conditioned and these political rights are closely related to each other. These are fundamental assumptions of the socialist concept of human rights. In a form of propositions, they have been frequently formulated in international politics.

The development of science and technology creates a double task of comprehensive utilization of technology for the benefit of humanity and the simultaneous prevention of its negative effects. The efforts made in international politics led the way for domestic initiatives, particularly in the complex formulation of this problem. The resolution made in 1968 in Teheran during the international conference on human rights has guided the work of the UN in this field. In consequence, the General Assembly has obliged the Secretary General to carry out investigations on the following problems: 1) having regard for the sphere

of private life of the individual in respect to the progress in the development of mass information and communication media (eavesdropping and observation techniques); 2) protection of the individual, of his physical and psychological integration in respect to the progress in biology, medicine and biochemistry; 3) means of electronics utilization which are capable of threatening human rights (mainly the question of information banks); 4) maintaining the balance between scientific and technological development and the intellectual, cultural and moral progress of humanity. The report of the Secretary General was a subject of discussion in the Human Rights Commission, which has decided to focus not only on potential dangers to human rights brought about by the progress of science and technology, but, first of all, upon the possibilities of its utilization to pursue the development of economic and social rights.

Numerous initiatives have been already taken up in the forums of various international organizations. Yet all the work is still in the hands of experts and the resolutions of international organs are of general character, aiming at designing further directions of investigation rather than at formulation of binding norms. Nevertheless, it is expected that international acts will gradually be adopted, initially in the form of recommendations and declarations and, in the course of time, probably in the form of conventions.

The works tending towards formulation of international principles regulating preservation of the natural environment are a continuation of these projects. This issue has been already mentioned in the Declaration of Social Progress and Development. The 1969 report of Secretary General U Thant on preservation of the natural environment was a turning point on the issue. The first steps towards creation of an international system of environmental protection were the "Declaration of the Environment" and the "Plan of Activities" attached to it, which were adopted in Stockholm during the 1972 conference. These works have been taken up both by particular states and by numerous international organizations. Close international cooperation is a condition for their effectiveness. This must comprise: an exchange of information and experience; a common policy of neighboring countries; and the working out of relevant international norms.

Preservation of the natural environment is a question of an interdisciplinary nature; it substantially exceeds the problems of human rights. But it is characteristic of both international and domestic initiatives and of the literature on the subject to emphasize the humanitarian aspects and goals of work related to preservation of the natural environment.

There is also another tendency in the international protection of human rights which has appeared since 1945 and has been consolidated in the course of years. This is an emphasis on the inseparable relation of human rights protection and the defense of world peace. This issue has been mentioned in almost all the acts referring to human rights of various symposiums and conferences. The "Declaration on Preparation of Societies for Life in Peace", adopted upon Polish initiative, is the last act which mentions this relationship.

*

A thorough presentation of international codifications of human rights and of their doctrinal and ideological scope could cause certain problems in a paper as brief as this one. I have therefore attempted to indicate only these changes which are considered milestones, delimitating the respective stages of work on the international protection of human rights. Detailed questions have been omitted. The evolution of international human rights codifications described above does not raise any doubts; it is quite evident from the substance of the relevant acts: treaties, declarations and resolutions. This evolution has been of quite stable character, that is, no breakdown of its tendencies has been observed. Consequently, the question arises whether a parallel evolution has also occurred in concepts of human rights. In other words, whether the substance of international codifications referring to human rights resulted from doctrinal changes and whether these changes were of similar character. The settlement of this question would allow an answer to the question whether the international acts are an expression of forming a single common concept of human rights, or if they are an effect of a compromise of several concepts. An answer to this question would require a detailed analysis of the respective concepts of human rights, which exceeds both the scope of this paper and the competence of the author. Yet some fundamental features of contemporary concepts of human rights are worth mentioning.

International acts have been formulated under the influence of the two dominant concepts of human rights: the non-Marxist one and the socialist one. Let us take a look at some basic directions in the evolution of these concepts.

The foundations of the liberal concept of human rights were to some extent uniform and found universal acceptance up to the first half of the nineteenth century. They formed constitutional catalogs of human rights. The Historical School and the Positive Philosophy of Law have

influenced the regulation of human rights and its justification, while basically having no impact on the catalog of these rights. In the era of liberalism (especially in its early period) the capitalist state model was developed from the concept of human rights. Presently, the phenomenon has taken a reverse course: it is a concept of the state which influences the substance and the scope of human rights. Among other things, this is a consequence of the adoption by the state of the authority to regulate social life. Therefore, the concept of human rights has to be analyzed as a part of the conception of the state.

The new, contemporary concept of the welfare state, known as a "sozialer Rechtsstaat" in German, has taken the place of the liberal model of the state. The differences between these two variations of the capitalist system's realization are of minor importance, at least with regard to the scope of human rights. The fundamental task of the state and society, as it is proclaimed by the contemporary non-Marxist concept of the state, is to create prerequisites for the unrestrained development of human personality in the conditions respecting human dignity. In the sphere of human rights this means that each man should be a subject of individual freedoms and public freedoms and rights; but, simultaneously, the individual has to be provided with rights which guarantee the real utilization of these freedoms, namely socio-economic rights. In both fields this peculiar task falls to the state. It must simultaneously safeguard freedoms and be an instrument for realizing their socio-economic prerequisites. The position of the individual long ago ceased to be described as *status negativus*.

Resulting from changes in the relations between the citizen and the state, as well as from other transformations of social, cultural and civilization life — which are presented here in a very concise way — some problems frequently occur which require the following: the correlation of constitutional regulations with the socio-political reality, justification of constitutional provisions regarding human rights and finally, the prognostic theory of human rights elaboration. In spite of all their differences, various theoretical concept of human rights which have been formed can be contained in a general model of a contemporary non-Marxist democratic state.¹¹

The socialist concept of human rights is in a somewhat different

¹¹ Their detailed description is offered by Z. KĘDZIA in: *Burżuazyjna koncepcja praw człowieka* [The Bourgeois Concept of Human Rights], Wrocław 1980. See also M. SOBOLEWSKI, *Prawa i wolności obywatelskie w wysoko rozwiniętych państwach kapitalistycznych* [Civil Rights and Freedoms in the Advanced Capitalist States], in: *Prawa i obowiązki obywatelskie w Polsce i świecie* [Citizens' Rights and Duties in Poland and in the World], Warszawa 1978, p. 69 ff.

situation. The Marxist concept of human rights is also one of the elements of the Marxist concept of socialist state. That is, the principles concerning human rights result from the principles of the socialist system. A critical approach to the foundations of liberal bourgeois (non-Marxist) state became a starting point of the socialist concept of human rights. Both, the liberal concept of human rights and its legal and political developments came under criticism. Yet, many times it has been emphasized by the classics of Marxism that the formulation of the liberal concept of human rights was a matter of vital concern. They indicated above all the importance of the introduction of equal rights principle and a right to vote to the society as to the final liquidation of feudal system privileges. But the political emancipation of individual was only a partial realization of the program of human liberation. The classics of Marxism maintained that human rights cannot be fully and effectively guaranteed to the whole of society in a social system founded on private property of the production means.¹³

They formulated the theory of socialist state founded upon the development tendencies of the former socio-economic formations. The detail theory of human rights in the socialist state was not elaborated though, neither was the catalog of human rights to be guaranteed in the internal law. As a result only a general vision of human rights in the socialist system was presented. Any further development of this concept has to confront the Marxist formulation of human rights with the reality and the contemporary theory of human rights. It should be of a prognostic character. Meanwhile, the reflections upon human rights in literature of the socialist states are too narrow. They are most often limited to the analysis of constitutions and of legislation or to quoting the classical scholars of Marxism, the attempts of the exhaustive reconstruction of the socialist human rights concept have not been numerous.¹³ Still there is a lack of a developed theory of human rights which could perform prognostic functions, although the prognostic theory of the development of the socialist state has been already elaborated.¹⁴

¹³ A. BURDA, *Marks o podstawowych prawach człowieka* [Marx on the Fundamental Human Rights], "Studia Prawnicze", 1968, No. 20, p. 5 ff.

¹³ W. SOKOLEWICZ, *O socjalistycznej koncepcji podstawowych praw i obowiązków obywateli* [On the Socialist Concept of the Fundamental Rights and Duties of Citizens], "Studia Prawnicze", 1978, No. 2, p. 3 ff. A. BURDA, *Prawa obywatelskie w konstytucjonalizmie socjalistycznym* [Human Rights in the Constitutions of Socialist States], in: *Studia z zakresu konstytucjonalizmu socjalistycznego* [Studies on the Socialist Constitutions], Wrocław 1969, p. 161 ff.

¹⁴ Reflecting upon perspectives to formulate the theory of socialist state,

The basic stipulations of the non-Marxist and socialist concepts are common, or actually almost identical, in the sphere of human rights. Constitutional catalogs of human rights in the contemporary world have undergone a far reaching process of unification. Identical wording of human rights regulations can often be found in countries having different socio-political systems. This phenomenon is resulting from the fact that there are several identical principles concerning human rights in the systems of norms and values of various societies. The view is generally taken that some rights are vested with the individual irrespective of their formulation in the internal law. They are also considered to be more durable than norms of the internal law. The question occurs as to whether these rules can be understood in the identical way. In my estimation this is possible to a very large extent. International agreement on the human rights catalog, reached on the bases of the contemporary non-Marxist and socialist doctrines was approved by the Third World countries. In my opinion, the substance of the international acts is a proof that the understanding on the sphere of values to be protected was reached. For some humanitarian values are common for all the humanity and laying down the universal catalog of human rights can only confirm this proposition. The whole of international community, irrespective of its political, economic or ideological divisions, has to take joint actions to guarantee these values. The concerted actions are particularly necessary to realize new human rights which are more and more often postulated to come under the international protection. It is the case of, among others, a right to life in peace, in genial environment, and a right to equitable economic order.¹⁵ The agreement on human rights catalog is not verbal only, neither it is a compromise. It is the expression of the formation of some concept of human rights which can transcend the various socio-political systems. The international society and all who struggle for human rights should be concerned with securing the identical interpretation and implementation of these universally adopted principles.

J. WIATR indicates that it has to be the "theory of development" of that society. It aims at construction of the theoretical vision of a new society and of the plan to execute the vision. *Marksistowska teoria rozwoju społecznego* [*The Marxist Theory of Social Development*], Warszawa 1973, p. 556. This postulate has to be at full length referred to the theory of human rights in socialist state.

¹⁵ Z. RESICH, *Międzynarodowa ochrona praw człowieka* [*The International Protection of Human Rights*], Warszawa 1981, p. 164 ff.

The Inviolability of Frontiers and the Territorial Integrity in the Treaties Between Poland and the GDR, Between Poland and the FRG and in the Final Act of the Helsinki Conference

by JANUSZ SYMONIDES

I

Of the two concepts mentioned in the title of this paper, the older one in international law is that of territorial integrity, territorial entity, territorial indivisibility. The term "territorial integrity" made its entry into the sphere of international relations before the principle prohibiting the threat or use of force, now binding under the law of nations, took shape.

When discussing the origins of the concept of territorial integrity, some scholars refer sometimes to the proposals of eternal peace by Cruce, Saint-Pierre or Kant, which responding to various motifs aimed at guaranteeing the territorial *status quo*.¹ However, the concept itself made its entry into international relations only at the beginning of the 19th century.² It was the Congress of Vienna which on July 9, 1815 guaranteed the eternal neutrality of Switzerland and part of Savoy. In a special act issued on December 30, 1815 the Powers concerned stated that they

"guarantee the integrity and inviolability of its territory within new frontiers, as fixed by the acts of the Congress of Vienna and by the Treaty of Paris of that day and as they will be fixed in the future in accordance with the Protocol of November 5".³

¹ T. KOMARNICKI, *La question de l'intégrité territoriale dans le Pacte de la Société des Nations*, Paris 1923, p. 16 ff.

² H. RUMPF, *Integrität*, in: *Wörterbuch des Völkerrechtes*, vol. 2, Berlin 1961, p. 27.

³ B. WINIARSKI, *Wybór źródeł do nauki prawa międzynarodowego* [Selected Source Materials for the Study of International Law], Warszawa 1938, p. 19. The Act explained further that: "no unfavourable conclusions for Switzerland, as to its neutrality and territorial inviolability can be drawn and must not be drawn

Similar guarantees were accorded to Turkey by the Congress of Paris, March 30, 1856. In Article 7 of the Peace Treaty, the signatory states undertook to

"respect the independence and territorial integrity of the Ottoman State, guaranteeing jointly the respect for that undertaking; therefore they will consider any action susceptible to violate it as a question of universal interest".⁴

Several treaties aimed at ensuring the integrity of Denmark, Korea and Switzerland have been concluded in the 19th and the beginning of the 20th century. When renouncing their "right" to violate the territory of a given state and guaranteeing the territorial integrity of such a state, the Powers concerned were not moved, of course, by the love of peace or other altruistic motives. They responded to quite different calls, among which self-interest played the dominant part. It was self-interest which called for the preservation of a balance of power or equal opportunities to exploit a weak and backward country, i.e. the preservation of the territorial *status quo*.

The concept of territorial integrity found its place in the Pact of the League of Nations, which pursuant to the XIV Point of the Wilson Declaration provided in Article 10 that:

"The Members of the League undertake to respect and protect against any external aggression the territorial integrity and political independence of all Members of the League. In the case of an aggression, its threat or danger the Council will indicate the measures to be taken in order to ensure the implementation of this undertaking."

An analysis of Article 10 often led to the question whether the maintenance of the territorial integrity ensured protection only against the loss of territory or also against any action directed against such a territory, such as occupation, invasion, even without intent to annex. The ambiguity was further compounded by the contradiction between Articles 10 and 15 of the Pact. According to Article 10 aggressive war was prohibited, with the exception of self-defence, whereas Article 15 provided in some cases for the possibility to resort to such a war. All attempts at reconciling the two Articles proved fruitless, so that finally it was asserted that the guarantee of territorial integrity apply only to wars prohibited under Article 15. It goes without saying that such an interpretation weakened considerably the impact of Article 10.

With the formulation in Article 2, p. 4 of the United Nations Charter

from the events which led to the passage of allied troupes through a part of the territory of the Helvetic Confederation".

⁴ Such an obligation was accepted by Austria, France, the United Kingdom of Great Britain, Prussia, Russia and Sardinia.

of the obligation to refrain from the threat to use force or the use of force against the territorial integrity or independence of any state or in any other manner inconsistent with the aims of the United Nations, the obligation to respect the territorial integrity of states has been broadened. Modern international law prohibits the use of force in international relations without distinction of the motives, whether it is intended to lead to territorial changes or not. Any act of coercion which infringes upon the territorial sovereignty of a state, for instance by temporary occupation, is prohibited. Furthermore, as confirmed by the opinion of the International Court of Justice concerning the Strait of Corfu, it is prohibited to resort to reprisals, irrespective of the fact as to whether they are directed against the territorial integrity of another state or not.

On the basis of the principles of the United Nations Charter, inviolability of frontiers can be treated, on the one hand, as an element of the principle of territorial integrity and, on the other hand, as an element of the principle of the non-use of force in international relations. The Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among Nations in Conformity with the Charter of the United Nations adopted in 1970 provided that States will refrain in international relations from the threat to use force or from the use of force against territorial integrity as well as against the actual international frontiers of another state.⁵

In the treaty practice of States, confirmation of inviolability of frontiers and territorial integrity appears in various conceptual contexts. It covers:

- a) the confirmation or recognition of a title to a territory;
- b) the mutual renunciation of the use of force against the territories of the parties concerned;
- c) the guarantee of inviolability of frontiers and territorial integrity, which means that when an alliance exists any violation constitutes a *casus foederis* and involves the obligation to come to the assistance of the victim of such a violation.

In the European context, inviolability of frontiers implying the re-

⁵ Comp. the text of the principle according to which states will refrain in their international relations from the threat to use force and from the use of force against the territorial integrity and political independence of any state, or in any other manner inconsistent with the aims of the United Nations Organization. This principle involves, apart from the obligation to respect territorial integrity and inviolability of frontiers, also indirectly the obligation to respect the inviolability of the territory of another state, prohibiting, among other things, military occupation.

cognition of the post-war territorial *status quo* and the renunciation of territorial claims has acquired particular importance, becoming a *conditio sine qua non* of the construction of a system of European security and peace. For this reason, inviolability of frontiers became a unique fundamental principle of European relations, accepted and given verbal expression in the Final Act of the Conference on European Security and Cooperation. The treaties concluded by Poland with the GDR and the FRG played an important part in its elaboration.

II

The Western border of Poland, foreshadowed in the Yalta Agreement, was fixed in the Potsdam Treaty of August 2, 1945. At that time neither of the existing German states could be represented at the conference table and, pursuant to the Act of Unconditional Surrender of May 8, 1945 and the Declaration of June 5, 1945, the Allied Powers who assumed supreme authority over Germany acted on its behalf. In Article 13 of the Declaration they stated that they will take all measures deemed necessary for peace and security and will impose upon Germany the obligation to comply with any order in the political administrative, economic, military and other fields. The territorial decisions contained in the Potsdam Treaty implement the right stated in the preamble of the Declaration to fix the future borders of Germany and the legal situation of Germany and of all territories which were part of the German State.⁶

Since its establishment, the German Democratic Republic accepted the full implementation of all obligations deriving from the Potsdam Treaty, including its territorial decisions concerning the border on the Odra and Nysa Łużycka. The Manifesto of the National Front of Democratic Germany of October 7, 1949 declared the readiness to

"accept fully and unconditionally the Potsdam decisions concerning the democratization and demilitarization as well as the obligations of Germany towards other nations".⁷ A few days later, on October 12, 1949, the Prime Minister of the German Democratic Republic, Otto Grotewohl stated in this exposé that

⁶ Declaration concerning the defeat of Germany and the assumption of supreme power over Germany by the governments of the USSR, Great Britain, USA and the Provisional Government of the French Republic. Text — see *Prawo międzynarodowe i historia dyplomatyczna* [International Law and Diplomatic History — Selected Documents], ed. L. Gelberg, vol. 3, Warszawa 1960, p. 135.

⁷ *Wybór dokumentów* [Selected Documents], 1949, No. 10, p. 858 ff.

"For us the border on the Odra and Nysa is the border of peace, which renders possible the establishment of friendly relations with the Polish people".⁸

The position of the German Democratic Republic on this issue has been repeated by the GDR Prime Minister in his statement on foreign policy on February 22, 1950.⁹

It came therefore as no surprise that the first international treaty concluded by the German Democratic Republic was a treaty with the Polish People's Republic on the delimitation of the actual Polish-German state border, signed July 6, 1950 by the Prime Ministers and Foreign Ministers of both states in Zgorzelec.¹⁰ In the treaty both sides stated in Article 1 that

"the fixed, actual border stretching from the Baltic Sea along the line west from the town of Świnoujście and later along the river Odra to the place where the river Nysa Łużycka flows, and along the Nysa Łużycka to the Czechoslovak border, constitutes the state border between Poland and Germany."

In order to delimitate the frontier on land a Polish-German Mixed Commission has been set up (Article 3); the treaty provided also for the adoption of an act concerning the delimitation of the state border between Poland and Germany (Article 5). Following the delimitation of the frontier on land such an act was signed on January 27, 1951 in Frankfurt on the Odra.¹¹

The Treaty of Zgorzelec has considerable political and legal importance. Politically, it marked a historical turning point in the relations between the nations of both states. Legally, it unequivocally reaffirmed the recognition by both sides of the fact that the legal foundation of the fixed actual border is the Potsdam Agreement, in relation to which the Zgorzelec Treaty of 1950 is of an executory nature. Thus, the signing of the Zgorzelec Treaty and of the Act of Frankfurt concluded the final stage of the fixing of the Polish-German border, together with its demarcation on land.¹² The importance of the Zgorzelec Treaty was also

⁸ *Ibid.*, pp. 893—894.

⁹ He stated that: "Because of the symbolic importance of that fact, as the expression of the return of the German nation to the road of irrevocable policy of friendship and peace, I would like to renew explicitly the recognition by Germany of the frontier on the Odra and Nysa as the frontier of peace". *Wybór dokumentów...*, 1950, No. 6, pp. 551—552.

¹⁰ *Dziennik ustaw [Journal of Laws]*, 1951, No. 14, item 106, further quoted as Dz. U.

¹¹ Dz. U., 1952, No. 53, item 346.

¹² The process of fixing a state boundary involves three acts: a) the adoption of a political decision; b) delimitation, or the detailed description of the boundary in a treaty, and c) demarcation, or the fixing of the frontier on land. Undoubtedly, the Zgorzelec Treaty is a demarcation treaty. A. KŁAFKOWSKI (*Granica polsko-*

embodied in the fact, that it was signed by direct neighbours, who as a result were able to act on many problems related to the administration and functioning of the common border, such as: navigation on the rivers Odra and Nysa Łużycka, utilization of water resources, movement of population, etc.¹³ Later agreements were concluded on the demarcation of the continental shelf (October 29, 1968) and on the demarcation of the Polish zone of maritime fisheries (December 19, 1971).

The question arises as to whether and in what sense the treaty relations between Poland and the German Democratic Republic touch upon the problem of inviolability of borders and territorial integrity. There can be no doubt that the problem of the inviolability of the border on the Odra and Nysa Łużycka were treated from the very outset not as a bilateral question, or as a result or element of the renunciation of the use of force, but as a broader, all-European problem of peace and international security. In an interview accorded by the Prime Minister of the GDR Otto Grotewohl to a group of Polish journalists on October 19, 1949, he stated that:

"we consider [...] that the border on the Odra and Nysa is the border of peace and we consider that those who ask for a revision of that border are the enemies of the German and Polish peoples".¹⁴

In the Preamble to the Zgorzelec Treaty the signatory parties stressed, among other things, that they are moved by the desire to consolidate universal peace, that they consider

"the fixed actual border as the inviolable border of peace and friendship, which does not separate, but unites both nations."

In his speech of July 6, 1950 delivered on the occasion of the signing of the Zgorzelec Treaty Otto Grotewohl stated emphatically:

"An essential condition of peace is also friendship between the Germans and the Polish Republic. The border on the Odra and Nysa is the border of peace because the peace between our two nations is a condition of peace in Europe".¹⁵

niemiecka po II wojnie światowej [The Polish-German Frontier after World War II], Poznań 1970, p. 18 ff.; also *Układ Polska-NRF z 7 grudnia 1970* [Poland-FRG Treaty of December 7, 1970], Warsaw 1973, p. 55 ff.) considers that the delimitation took place in the Potsdam Treaty, whereas K. SKUBISZEWSKI (*Zachodnia granica Polski w świetle traktatów* [The Western Frontier of Poland in the Light of Treaties], Poznań 1975, p. 705) states that the elements of delimitation are to be found in the annexes to the Act on the implementation of the delimitation of the state frontier between Poland and Germany of 1951.

¹³ These matters are settled by Agreements of February 6, 1952, of March 11, 1965, of February 25, 1964, and of November 25, 1971.

¹⁴ Poland-GDR. *Materials and Documents*, edited by J. Sulek and M. Tomala Warsaw 1970, p. 32.

The importance for European security of the inviolability of borders and territorial integrity of Poland and the German Democratic Republic was strongly emphasized in Article 3 of the Treaty of Friendship, Cooperation and Mutual Assistance signed by the two states March 15, 1967.¹⁶ It is, however, worth noting that the Treaty deals not only with the inviolability of the border on the Odra and Nysa Łużycka but also with the inviolability of the border between the German Democratic Republic and the Federal Republic of Germany. In the preamble to the Treaty the parties pledge themselves to joint action against the threats to the peace arising from the aggressive activities of the West-German forces of militarism and revenge so as to ensure the inviolability of the borders and the territorial integrity of the two states.

III

In contrast with the attitude of the GDR, the Federal Republic of Germany, from its very inception, refused steadfastly to recognize the border on the Odra and Nysa. In the first exposé of the federal government of September 20, 1949, Chancellor Konrad Adenauer stated:

"Under no circumstances can we acquiesce in the separation of these territories".¹⁷

The FRG protested against the Zgorzelec Treaty, questioned the border on the Odra and Nysa, refused to enter into negotiations on the establishment of diplomatic relations with Poland.

The situation changed only in September 1969, when as a result of the elections to the Bundestag the government in the FRG was taken over by a coalition of the social democrats and the liberals headed by Willi Brandt.¹⁸ The new federal government responded favourably to the proposal submitted on May 17, 1969 by Władysław Gomułka, on the conclusion of a treaty in which the FRG would recognize the final character of the Odra and Nysa border. The negotiations on the settlement of the interstate relations between Poland and the Federal Republic of Germany began in Warsaw on February 5, 1970, and ended

¹⁶ *Wybór dokumentów...*, 1950, No. 8, p. 727.

¹⁶ *Wybór dokumentów...*, 1967, No. 3, pp. 299—306.

¹⁷ Quoted by K. SKUBISZEWSKI, *op. cit.*, p. 218.

¹⁸ R. WOJNA, *Z problemów normalizacji stosunków z Republiką Federalną Niemiec* [Problems of Normalization of Relations with the Federal Republic of Germany], in: *Wybrane problemy międzynarodowe* [Selected International Problems], ed. J. Symonides, Warszawa 1977, p. 271.

December 7, 1970 with the signing of a Treaty between the Polish People's Republic and the Federal Republic of Germany on the foundation of the normalization of their mutual relations.¹⁹ The Treaty entered into force on June 3, 1972.

The Treaty between the PPR and the FRG has been the subject of many competent analyses by eminent Polish scholars,²⁰ its presentation in this paper will therefore be limited to an interpretation of the provisions concerning the inviolability of borders and territorial integrity. It must, however, be emphasized that the very basis of the Treaty is that portion of Article I in which

"1. The Polish People's Republic and the Federal Republic of Germany state unanimously that the existing border line whose course had been fixed in Chapter IX of the decisions of the Potsdam Conference of August 2, 1945 [...] constitutes the Western state border of the Polish People's Republic".

The fact that the two sides stated unanimously that the border line fixed in Potsdam constitutes the Polish Western border can be interpreted only as its final recognition by the FRG. Article I has therefore a declaratory importance: it does not create a title, but recognizes an existing title arising from the Potsdam Agreement.

The inviolability of borders and territorial integrity appear in the Treaty of 1970 both in the context of Polish-German bilateral relations and in the broader context of all-European relations. In conformity with the title of the Treaty, the reaffirmation of the inviolability of borders and of the unconditional respect of the territorial integrity of both parties serves the cause of normalization of their mutual relations and aims to create, as stated in the Preamble to the Treaty,

"solid foundations for their peaceful coexistence as well as for the development of normal and goodneighbourly relations among them".

This is a broader formula than the wording proposed by the FRG, which at the beginning of the talks proposed the conclusion of a treaty

¹⁹ *Wybór dokumentów...*, 1970, No. 12, item 250.

²⁰ Comp. A. KLAFFKOWSKI, *Układ Polska-RFN [Poland-FRG Treaty]*, and *Układ Polska-RFN o podstawach normalizacji stosunków jako element uznania status quo w Europie [Poland-FRG Treaty on the Foundations of Normalization of Relations as an Element of the Recognition of the Status Quo in Europe]*, "Sprawy Międzynarodowe", 1971, No. 9, p. 5 ff.; J. KOKOT, *Od Poczdamu do Helsinek [From Potsdam to Helsinki]*, Opole 1974; J. SKIBIŃSKI, *Polska-RFN. Problemy normalizacji stosunków [Poland-FRG. Problems of Normalization of Relations]*, Warszawa 1974; K. SKUBISZEWSKI, *op. cit.*; J. SUŁEK, *Główne kierunki politycznej i prawnej interpretacji układu PRL-NRF z 7 grudnia 1970 [Main Directions of Political and Legal Interpretation of the Polish-FRG Treaty of December 7, 1970]*, "Sprawy Międzynarodowe", 1972, No. 6, p. 5 ff.

on the non-use of force. The inviolability of borders in the context of the non-use of force involves, principally, the prohibition to use force with the aim of violating existing borders and does not imply, necessarily, the recognition of the title and of all rights and obligations arising from the exercise of territorial sovereignty.

It must be noted that the inviolability of the border on the Odra and Nysa has been recognized in the Treaty on the non-use of force signed by the USSR and the FRG on August 12, 1970.²¹ In Article 3 both parties stated that they

"recognize as inviolable, now and in the future, the borders of all states in Europe, such as they exist on the day of signing of the present Treaty, including the Odra-Nysa line, which constitutes the Western border of the Polish People's Republic, and the border between the Federal Republic of Germany and the German Democratic Republic".

The recognition of inviolability of borders in Article 1 of the Treaty between Poland and the FRG is unconditional both as regards its scope and time. The parties reaffirm the inviolability of their borders "now and in the future" and declare that they have no mutual territorial claims at present and that they have no intention to put forward such claims in the future. Formally, this wording applies to both signatories, nevertheless, because of the fact that Poland had never presented any territorial claims towards the FRG, the renunciation of such claims is practically of a unilateral nature. The formula concerning the inviolability of borders and territorial integrity contained in Article 1 can also be interpreted in the bilateral context as an additional confirmation of the title of a state to its territory, and as a mutual recognition of the exercise of territorial sovereignty with all its consequences, including the right to request that all actions which directly or indirectly threaten the exercise of that sovereignty or violate the territorial integrity of the state be stopped. This applies to the activities of all organs, including legislative and judiciary actions of all kind.

The Treaty contains also a recognition of the existing *status quo*, not only in the territorial but also in the political sense, since it is stressed in the Preamble to the Treaty that the Treaty reflects the desire to strengthen the peace and security in Europe, as well as the realization that the inviolability of borders and the respect of the territorial integrity and sovereignty of all states in Europe within their present borders represent a fundamental condition of peace.²²

²¹ *Wybór dokumentów...*, 1970, No. 8, item 149.

²² The sentence on the respect for sovereignty of all states in Europe in their present boundaries undoubtedly covers also Poland and represents still another

Undoubtedly, the Treaty between Poland and the FRG with its recognition of the European *status quo* and the renunciation by the FRG of all territorial claims, which removed an important source of tension and conflict in Central Europe, opened the road which led to the Conference on European Security and Cooperation.

In spite of the fact that the Treaty between Poland and the FRG left no place for ambiguities, attempts are being made in various quarters of the FRG to interpret its provisions in a manner totally inconsistent with its spirit and letter.²³ This is also reflected in the judicature of the FRG, and in particular in the opinion of the Constitutional Tribunal concerning the Treaties with the USSR and Poland of July 7, 1975. These attempts are in line with the resolution adopted together with the ratification laws by the Bundestag on May 17, 1972.²⁴ This resolution states, among other things, that the Treaties with Poland and the USSR constitute "an important element of the *modus vivendi*" but that "they provide no legal basis whatsoever for the actually existing borders". Opinions are expressed in some West-German writings alleging that Poland failed to voice its opposition against this resolution.²⁵ This is not true. Speaking during the ratification debate in parliament on May 25, 1972, the then Polish minister of foreign affairs stated that:

"We have agreed that the Treaty between Poland and the Federal Republic of Germany is of essential importance to Poland. With this Treaty the Federal Republic of Germany has recognized the border on the Odra and Nysa Łużycka as final and inviolable. This represents a final recognition under international law and no reservation contained in a unilateral resolution of the Bundestag can have a binding force under international law, from the point of view of international law and the obligations arising from the Treaty".²⁶

confirmation of the title and sovereignty of Poland over its Western and Northern territories which were ceded to it by the Potsdam Treaty.

²³ Comp. C. ARNDT, *Legal Problems of the German Eastern Treaties*, "American Journal of International Law", 1980, No. 1, p. 122 ff. See also by the same author, *Die Verträge von Moskau und Warschau*, Bonn 1973.

²⁴ *Wybór dokumentów...*, 1972, No. 5, item 104.

²⁵ C. ARNDT, *Legal Problems...*, p. 126. Opposite views can also be found in German writings. See, for example, J. A. FROWEIN, *Legal Problems at the German Ostpolitik*, "International and Comparative Law Quarterly", 1974, p. 113. He states that the Resolution had certainly not been accepted by Poland in a manner required by Article 31, 2b, of the Convention on the Law of Treaties of 1969.

²⁶ *Wybór dokumentów...*, 1972, No. 5, item 99.

IV

The groundlessness of some interpretations voiced in the FRG, which are in fact directed against the very essence of the principle of inviolability of borders and territorial integrity of states, are equally obvious when confronted with the preparatory work and the final results of the Conference on Security and Cooperation in Europe.

One of the first problems which arose during the multilateral preparatory negotiations to the Conference lasting from November 22, 1972 to June 8, 1973,²⁷ confronted the participants with the following choice: is the inviolability of borders to be one of the autonomous principles, which the participating states will pledge to apply in their mutual relations, or is the inviolability of borders to be subordinated and formulated as an element of the principle prohibiting the threat to use force or the use of force.

The socialist states were in favour of setting up the principle of inviolability of borders as an autonomous one. Their stand derived from the general assumption that the construction of a system of security and cooperation in Europe implied the unequivocal acceptance of the existing border, and of the existing territorial *status quo*. This general assumption was frequently and emphatically emphasized by the socialist states during the entire period preceding the opening of the Conference. As early as 1966, the states-parties to the Warsaw Treaty declared in the Bucarest Declaration on the Strengthening of Peace and Security:

"One of the fundamental premises of European security is the inviolability of the existing borders between the European states including the borders of the sovereign German Democratic Republic, Poland and Czechoslovakia".²⁸

In the Berlin Declaration of the Consultative Political Committee of the Warsaw Treaty of 1970, the member-states of the Treaty declared that:

"The recognition of the existing situation in Europe, as shaped by the results of the Second World War and post-war developments, of the inviolability of the actual borders of the European states, the compliance with the principle of settlement of conflicts exclusively by peaceful means, without resort to force or to

²⁷ Comp. M. DOBROSIELSKI, *Konferencja Bezpieczeństwa i Współpracy w Europie* [Conference on Security and Cooperation in Europe], in: *Wybrane problemy międzynarodowe* [Selected International Problems], edited by J. Symonides, Warszawa 1976, p. 251 ff.

²⁸ *Bulletin of the Press and Information Department of the Ministry of Foreign Affairs: Poland and the Conference on Security and Cooperation in Europe*, Warsaw 1972, p. 14.

the threat to use force, all this is of immense importance for the fate of European peace, for the peaceful future of the nations of Europe".²⁹

The Consultative Political Committee of the member-states of the Warsaw Treaty, when calling for the universal recognition and practical application in Europe of the fundamental principles of peace and security, placed at the top of the list the inviolability of frontiers, stating in the Prague Declaration of 1972 on peace, security and cooperation in Europe that the borders between the European states, including the borders established as a result of the Second World War, are inviolable. They emphasized that any attempt to modify these borders would threaten the peace in Europe and that is why the inviolability of borders existing at present and the territorial integrity of all European states must be strictly observed and territorial claims by one state against another must be definitely abandoned.³⁰

When the preparatory work to the Conference on Security and Cooperation began, the principle of inviolability of frontiers was much more than a mere stipulation; it was in fact a principle of international relations incorporated by the socialist states in their treaties with the Federal Republic of Germany. Apart from the treaties concluded by the FRG with the USSR and Poland, Article 3 of the Treaty on the Foundations of Relations Between the German Democratic Republic and the Federal Republic of Germany contained a clause in which the parties reaffirmed the inviolability of the frontiers between them now and in the future and pledged themselves to the absolute respect of their territorial integrity.³¹ It may be noted that only in this Treaty is the inviolability of borders formulated in conjunction with the principle prohibiting the threat to use force or the use of force. In the Treaty concluded by the FRG with the USSR, in the Treaty concluded by the FRG with Poland and in the Treaty concluded later by the FRG with Czechoslovakia on December 11, 1973,³² the inviolability of frontiers figures in a separate article.

The inviolability of frontiers as separate principle was also formulated in the Declarations on friendship, cooperation and development of relations as well as in the Communiqués which the socialist states

²⁹ *Ibid.*, p. 59.

³⁰ *Conference on Security and Cooperation in Europe. Selected Documents 1964—1972*, edited by W. Multan, Warszawa 1973, p. 276. Also in the earlier Budapest Appeal of 1969. The Consultative Political Committee of the Warsaw Treaty, when formulating the fundamental premises of European security, placed in the forefront the problem of inviolability of the post-war frontiers.

³¹ *Wybór dokumentów...*, 1972, No. 12, item 278.

³² *Wybór dokumentów...*, 1973, No. 12, item 244.

signed with the Western states before the beginning of the preparatory negotiations to the Conference on European Security and Cooperation. For example, in the Declaration signed by Poland with France on October 6, 1972, the parties reaffirmed their

"determination to further base their policy in Europe on the compliance with the following principles:

- not to resort to the use of force or to the threat to use force,
- to respect the sovereignty, equality and independence, non-interference in the internal affairs,
- to respect the inviolability of existing borders".⁸³

Similarly, the principle of inviolability of frontiers was incorporated as a separate principle in the Polish-Belgian Declaration of November 14, 1972.⁸⁴

When in the course of the preliminary talks some Western states, especially the Federal Republic of Germany and Italy,⁸⁵ expressed their preference in favour of subordinating the principle of inviolability of frontiers to the principle of renunciation of the use of force, they pointed out that both in the Charter of the United Nations and in the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations adopted by the UN General Assembly on October 24, 1970, the principle of the inviolability of frontiers does not appear independently. As a matter of fact, the UN Declaration of 1970 states that:

"Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States".⁸⁶

The reason why the Federal Republic of Germany insisted that the inviolability of frontiers be treated together with the principle of renunciation of the use of force or the threat to use force in accordance

⁸³ *Wybór dokumentów...*, 1972, No. 10, item 232.

⁸⁴ "Trybuna Ludu" of November 15, 1972.

⁸⁵ Comp. S. DĄBROWA, *Zasady nienaruszalności granic i integralności terytorialnej państw na KBWE* [The Principles of Inviolability of Frontiers and Territorial Integrity of States at the Conference on Security and Cooperation in Europe], "Sprawy Międzynarodowe", 1975, No. 11, p. 9; J. WIEJACZ, *Nowy etap tworzenia trwałego bezpieczeństwa w Europie* [A New Stage in the Establishment of Lasting Security in Europe], "Sprawy Międzynarodowe", 1973, No. 7—8, p. 19; H. S. RUSSELL, *The Helsinki Declaration: Brobdingnag or Lilliput?*, "American Journal of International Law", vol. 70, 1976, p. 251.

⁸⁶ *Wybór dokumentów...*, 1970, No. 10, item 181.

with the UN Declaration of 1970, can be explained by the subsequent passage of that Declaration, which states that states have the obligation to refrain from the threat to use force or from the use of force in order to violate an international demarcation line, such as a truce line. This does not affect the position of the interested states as regards the status and effects of such a line, resulting from its special regime, and does not alter the temporary nature of such a line. The formula contained in the Declaration of 1970 says nothing about the renunciation of territorial revindications. Thus, what was really behind the formal argument, was the unwillingness to unequivocally renounce territorial claims, to recognize as final the existing frontiers in Europe, having in mind the possible outcome of the integration processes in Western Europe as well as the future of the so-called German question.⁸⁷

The opinion of the socialist states in favour of a separate formula covering the principle of inviolability of frontiers did finally prevail, so that in the final recommendations of the preparatory talks adopted on July 3, 1973 by the ministers of foreign affairs of the states participating of the first stage of the Conference on European Security and Cooperation, among ten principles listed therein the third and the fourth concern the inviolability of frontiers and the territorial integrity of states.

The adoption of these principles marked the opening of a discussion on their contents. The development of the ten principles governing the mutual relations among the states participating in the Conference and the preparation of an appropriate document was turned over to Commission I. The Commission acted during phase II of the Conference which opened in Geneva on September 18, 1973. General draft proposals concerning all principles have been submitted by the USSR as well as by France and Yugoslavia.

A draft proposal concerning the renunciation of the use of force, the inviolability of frontiers and the territorial integrity of states has been submitted on September 24, 1973 by the Federal Republic of Germany.⁸⁸ In conformity with the previous position of the FRG demonstrated during the preparatory talks, the draft provided for the prohibition of the use of force or of the threat to use force against the existing international frontiers of the states participating in the Conference, and outlawed force as a means of resolving conflicts and territorial problems pertaining to state frontiers. This was, in fact, a repetition of the formula used in the UNC Declaration of 1970. The draft

⁸⁷ M. DOBROSIELSKI, *op. cit.*, p. 262.

⁸⁸ *Conference on Security and Cooperation in Europe, Stage II—Geneva—doc. CSCE/II/A/3.*

stated further that frontiers are inviolable irrespective of their status. It provided also for the possibility of peaceful change in accordance with international law, by way of mutual agreement and in respect of the right of nations to self-determination.

The draft presented by the FRG was in keeping with the general West-German stand, according to which not all European frontiers are final, that in fact we are dealing only with a *modus vivendi*. The inclusion of a clause concerning peaceful modifications of frontiers aimed at weakening the final character of the inviolability of frontiers. Its acceptance would have meant a step backwards in relation to the treaties signed by the Federal Republic of Germany with the socialist states. These treaties sanctioned the final character of the European frontiers. Some problems arose during the negotiations in connection with the repetition of the formula contained in the treaties concluded by the socialist states with the FRG and concerning the renunciation of territorial claims. Among others, the United States objected because of the territorial problems with Canada.³⁹

After four months of discussion, on April 5, 1974, it was finally possible to conclude the work on the wording of the principle of the inviolability of frontiers. It stated that:

"The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers.

Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State".⁴⁰

The finally adopted text represents a major departure from that proposed by the Federal Republic of Germany which, because of the lack of support, had to make important concessions. The formula on the peaceful modification of frontiers was included into the principle of sovereign equality and respect for the rights resulting therefrom. In this way, it was emphasized that the implementation of corrections of frontiers is a sovereign right of all participating states. However, the Final Act of the Conference lists three conditions which must be met in order to make such corrections possible, and these are: a) they must be in accord with international law; b) they must be implemented by peaceful means; c) they must be preceded by mutual agreement. This is sufficient to safeguard the voluntary nature of the changes as well as to protect the interests of third parties.

³⁹ H. S. RUSSELL, *op. cit.*, p. 252.

⁴⁰ Conference on Security and Cooperation in Europe, Stage II—Geneva—doc. CSCE/II/A/125.

Two fundamental elements of the inviolability of frontiers formulated in the Treaties with the Federal Republic, namely the recognition of the existing frontiers and the renunciation of territorial claims, served as the very basis for the development of that principle in the Declaration of Principles adopted at the Helsinki Conference. In the Declaration, the states participating in the Helsinki Conference recognized as inviolable all their mutual frontiers as well as the frontiers of all European states; they pledged themselves to refrain, now and in the future, from violating these frontiers. The pledge covers: a) all frontiers in Europe (including the frontiers of Albania, which did not participate in the Conference); b) the frontiers of the non-European states participating in the Conference, namely the United States and Canada; c) the frontiers of the European states outside Europe.

The signatory states of the Final Act also pledged themselves to refrain from any claims or actions aiming at the annexation or usurpation of part or the whole of the territory of any participating state. Thus, they pledged themselves not only not to take such action on their own behalf, but equally to refrain from influencing another state or states to undertake an action aiming at a change of frontiers. The prohibition of such actions is unconditional and can not be waived on any account. This also explains why, in order to prevent any weakening of the significance of that principle, the statement on the possibility of peaceful change of frontiers was not, in spite of all attempts to the contrary, incorporated in the text which concerned it.

During the second phase of the preparatory work to the Conference, the wording of the principle of the territorial integrity of states was agreed upon without much controversy. This can be explained by the fact that after World War II the obligation to respect the territorial integrity of other states was given central status in international relations. It figures in many international treaties, declarations and governmental statements. It results not only from the fact that many international instruments refer to the principles of the Charter of the United Nations and, in particular, to the provisions of Article 2, p. 4, but also from the fact that the mutual respect of territorial integrity and sovereignty was recognized as the first among the five principles of peaceful coexistence.

Any attempt at interpreting and explaining the actual meaning of the concept of integrity must be based on Article 2, p. 4 of the United Nations Charter. The prohibition to use force or the threat of force against the territorial integrity or independence of any state was included into the Charter only at the Conference of San Francisco; the draft of the Charter elaborated in Dumbarton Oaks did not contain this

qualification and prohibited only the threat or the use of force. Its inclusion was the result of pressure exercised by small states.

A comparison of Article 10 of the Pact of the League of Nations with Article 2, p. 4 of the United Nations Charter shows the evolution of the principle of territorial integrity in the system of the United Nations. Of essential importance is the universal scope of the pledge to respect the territorial integrity of states. It applies not only to the UN member-states but to all states, including non member-states of the UN. And while the UN Charter, unlike the Pact of the League of Nations, does not devote a separate article to the problem of territorial integrity and deals with it in connection with the prohibition to use force, the mere fact that it prohibits unconditionally not only the use of force but also the threat to use force, broadens considerably the scope of the obligation to respect the territorial integrity of states. It implies not only the protection of the territorial integrity, the unconditional prohibition and illegality of territorial acquisition by force, but also its inviolability. Modern international law prohibits the use of force in international relations when such action is intended to change existing frontiers and also when there is no such intention.

The text of the principle of territorial integrity of states, agreed upon during phase II of the Conference on European Security and Cooperation provides that:

"The participating States will respect the territorial integrity of each of the participating States.

Accordingly, they will refrain from any action inconsistent with the purpose and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force.

The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such acquisition or occupation will be recognized as legal."⁴¹

All essential elements of the principle of territorial integrity have been incorporated in the Declaration of Principles of the Helsinki Conference. The participating states pledged themselves to refrain from any action conflicting with the aims and principles of the United Nations Charter and directed against the territorial integrity of another state, in particular from any use of force or threat to use force. Under protection is both the integrity of the territory and its inviolability, due

⁴¹ *Conference on Security and Cooperation in Europe, Stage II—Geneva—doc. CSCE/II/A/140.*

to the prohibition of military occupation and of any other action of direct or indirect coercive nature.

By mentioning in the Declaration of Principles governing mutual relations among participating states, of the principle of inviolability of frontiers, by going beyond the limit of the use of force or the threat to use force in the wording concerning territorial integrity, by introducing the prohibition of all actions contrary to the objectives and principles of the UN Charter, the Final Act of the Helsinki Conference marks a step forward in the development of international law as well as a step forward in relation to the Declaration of Principles of the UN of 1970.

* * *

A comparison of the territorial principles of the Helsinki Declaration with the provisions of the Treaty between the FRG and Poland warrants the conclusion that the Final Act developed and strengthened the provisions concerning the inviolability of frontiers and territorial integrity. The Final Act gave these provisions a regional status concerning relations among all participating states. The fact that attempts made at various preparatory stages to the Helsinki Conference and aiming at retreating from the Treaties concluded by the FRG with the Soviet Union and Poland ended in failure, closed finally the possibility of sophisticated interpretations designed to justify the treatment of the territorial *status quo* in Central Europe as some kind of *modus vivendi*. territorial *statut quo* in Central Europe as some kind of *modus vivendi*. claims or use of force, but also the possibility of other actions directed against the integrity and inviolability of the territory, against the political independence or unity of any other state.

International public opinion views the Final Act of the Helsinki Conference and the confirmation by it of the final and irrevocable territorial and political order in Central Europe established by the Potsdam Treaty, as equivalent to a European peace treaty. This appreciation is hardly affected by the fact that from the formal point of view the Final Act is not an international treaty. For it must be borne in mind that the principles incorporated in the Helsinki Declaration are in accord with international law: with the UN Charter and with the UN Declaration of Principles of 1970, and therefore binding principles of international law. The states participating in the Helsinki Conference, by stating that they are ready to respect these principles and to apply them in practice in their relations with all other participating states, irrespective of their political, social and economic order, bestowed upon them the quality of fundamental rules of customary law.

The Establishment and Legal Status of International Economic Organizations of the CMEA Member-States

by JERZY JAKUBOWSKI

1. The Actual Practice as Regards the Establishment of International Economic Organizations of the CMEA Member-States

Hitherto joint unions and enterprises of the CMEA member-states¹ have been established directly or indirectly by international agreements. Let us review briefly the nature of this practice.

Haldex, a joint Polish-Hungarian enterprise has been established by the agreement between the governments of Poland and Hungary signed April 16, 1959. The analysis of Article 1² and Article 10³ reveals that the enterprise came into being on the basis of that agreement and that, while its subsequent registration had been necessary, the act itself had been nothing more than a formality. This thesis, which I presented in a paper published in 1968⁴ is corroborated by the manner in which many questions relating to the legal status of "Haldex" have been dealt with in the agreement (see Article 1, alinea 3 concerning the share capital, Article 2 on the legal situation of Hungarian national employed by "Haldex").

Since Article 13 of the agreement on the establishment of "Haldex"

¹ The CMEA system distinguishes intergovernmental economic organizations and international economic organizations, the latter endowed with a legal personality under civil law. International economic organizations include international economic unions, joint enterprises and international economic companies. Their participants are national economic organizations of the CMEA member-states.

² The second sentence in Article 1 is worded as follows: "The enterprises *is being established* [emphasis — J. J.] in the form of a joint stock company under Polish law".

³ Article 10 begins with the following words: "The enterprise *is being established* [emphasis — J. J.] for an indefinite period".

⁴ J. JAKUBOWSKI, *Przedsiębiorstwa międzynarodowe. Pojęcia i klasyfikacja* [International Enterprise. Concept and Classification], "Państwo i Prawo", 1968, No. 8, p. 122.

did stipulate that it would enter into force the day of its confirmation by the appropriate organs of the contracting states, the creation of the enterprise had to be associated with that date; Haldex acquired, however, legal personality with its entry into the register of commercial companies in the district court of Katowice.

The same was true in the case of "Interansmash". The organization had been established by the agreement between the governments of Bulgaria and Hungary signed December 16, 1964. As stated by M. M. Boguslavsky,⁵ it owed its creation to that agreement and to its charter ratified by the Standing Bulgaro-Hungarian Economic Commission.

The Union Interatominstrument owes also its establishment to an intergovernmental agreement signed by the governments of Bulgaria, Czechoslovakia, GDR, Poland, Hungary and USSR, February 22, 1972. This is clearly to be seen from Article 1 of the Agreement which states:

"By virtue of the present Agreement the Contracting Parties *create* [emphasis mine — J. J.] the International Economic Union of Nuclear Apparatus — Interatominstrument".

The same applies to the Union Interatomenergo (see Article 1 of the Agreement signed by the governments of Bulgaria, Czechoslovakia, GDR, Poland, Romania, Hungary and USSR, December 13, 1973), to the Union Intertextilmash (see Article 1 of the Agreement signed by the governments of Bulgaria, Czechoslovakia, GDR, Poland, Romania, Hungary and USSR, December 13, 1973) and to the Union Interchimvolokno (see Article 1, alinea 1 of the Agreement signed by the governments of Bulgaria, Czechoslovakia, GDR, Poland, Romania, Hungary and USSR, June 21, 1974).

As the date of the establishment of the unions "Interatominstrument", "Interatomenergo", "Intertextilmash" and "Interchimvolokno" one considers the date of entry into force of the appropriate international agreements which coincides with the date of reception of the last document accepting the agreement by the depositary state.

The Polish-GDR joint enterprises "Przyjaźń" (Friendship) had also been established by intergovernmental agreement. Article 3, alinea 1 of the Agreement signed by the two governments, June 12, 1972 states clearly:

"The enterprise is established as of the date of signature of the Agreement" [emphasis mine — J. J.].

This brief review entitles to the conclusion that the act by which

⁵ M. M. BOGUSLAVSKIJ, *Pravovoe regulirovanie meždunarodnyh hōzjajstvennyh otnošenij*, Moskwa 1970, p. 209.

the above mentioned unions and enterprises have been created are intergovernmental agreements. This means that the date of creation coincided with the date of signature or the date of entry into force.

The same thesis found its confirmation in paragraph 13, alinea 1 of the Uniform Provisions Concerning the Creation and Activities of International Economic Organizations of the CMEA Member-States adopted in 1976 by the Executive Committee of the CMEA.⁶ According to these provisions a union established by an international agreement comes into being following the procedure laid down by that agreement.

The establishment of the Polish-Czechoslovak enterprise "Spedrapid" followed a different procedure. "Spedrapid" was created not by an intergovernmental agreement but by an agreement under Polish commercial law, namely by an agreement concerning the establishment of a limited liability company of June 22, 1946. The personal status of "Spedrapid" is regulated exclusively by Polish law. The agreement between the Polish and Czechoslovak governments of 1956 introduced no change in this respect, restricting itself to dealing with questions of public law.⁷

Since "Spedrapid" is unotypical in this respect (it had been established in 1949, long before the legal forms of cooperation between the member-states of the CMEA were developed) it can be argued that the procedure followed in the establishment of joint unions and enterprises of the CMEA member-countries was that of concluding special agreements on a governmental level, for the express purpose of establishing a concrete union or enterprise.

The question arises as to why such a practice was adopted.

It seems that there are three reasons which explain why this was so. First, the practice is rooted in the property system of the Socialist states. Second, this procedure is the consequence of the management system of the economy in the Socialist states. Third, it results from the legal system of these countries.

It must be borne in mind that in all member-states of the CMEA the nationalized enterprises play a decisive part in the national economy, and that hitherto joint unions and enterprises have been created out of components representing state (nationalized) property.⁸ The states as such do not participate in these unions and enterprises, but such

⁶ The Uniform Provisions are not legally binding; they constitute guidelines which could assist in the formulation of the statutes of the international economic organizations established by the member-states of the CMEA.

⁷ Cf. J. JAKUBOWSKI, *op. cit.*, p. 118.

⁸ Cf. J. ŠIRJAEV, *Socialističeskaja sobstvennost' v uslovijah èkonomičeskoj integracii stran-členov SEV*, "Voprosy Ekonomiki", 1973, No. 7, pp. 94—102.

unions and enterprises are composed of national economic organizations which dispose of state (nationalized) property. It is therefore understandable that the States themselves participate in their establishment by concluding intergovernmental agreements to that effect.

As was rightly pointed out by A. Burzyński,⁹ the management systems of the national economy in the member-states of the CMEA are oriented towards the organization of economic processes whose sole participants can only be the national economic units. It is with these units in mind that the economic mechanisms and the organizational and legal structures have been developing and perfected.¹⁰ The activity of international economic organizations could hardly find a suitable place in the legal framework created for that system. It is generally admitted in literature that the creation of a appropriate legal and economic environment determines the extent to which this form of cooperation between the member-states of the CMEA can be successfully applied. Such a favourable environment can be ensured only by the states; thus, the establishment of joint unions and enterprises by states solves that problem. Indeed, the intergovernmental agreements which led to such joint ventures cover a wide range of problems affecting the place of these unions and enterprises in the economic system of the signatory states.

Finally, the reason why the establishment of international economic organizations of the CMEA member-states takes place on the basis of intergovernmental agreements is the legal system of these states which not always allows for the creation of a legal personality of that type. It has to be borne in mind that in this case we are dealing with a legal person of a corporate type, based on shares, for only such a form opens the way for participation of organizations from various countries. Thus, for example, the Soviet Union permits the creation of share companies but only on an *ad personam* basis, because there is no general legal regulation on the subject. As far as legal doctrine is concerned, there is general agreement that the law of the USSR has no appropriate legal form for the joint unions and enterprises of the CMEA member-states.¹¹ In the German Democratic Republic there are provisions dealing with

⁹ A. BURZYŃSKI, *Tworzenie osób prawnych z udziałem inwestorów zagranicznych (na tle ustawodawstwa państw socjalistycznych)* [The Creation of Legal Persons with the Participation of Foreign Investors, under the Legal Systems of the Socialist States], "Studia Prawnicze", 1975, No. 2, p. 151.

¹⁰ *Ibid.*

¹¹ Cf. I. A. GRINGOLTS, *Meždunarodnye hozjajstvennye organizacii v stranah-členah SEV (ponjatie i vidy)*, "Učënye Zapiski Vsesojuznogo Naučno-Issledovatel'skogo Instituta Sovetskogo Zakonodatel'stva", 1973, vol. 28, p. 83.

companies (see law of April 20, 1892 on limited liability companies and law of January 30, 1937 on share companies but the prevailing opinion is that these laws cannot be applied to international economic organizations of the CMEA countries.¹² In Hungary there are provisions dealing with share companies and limited liability companies.¹³ Furthermore, the Decree 19 of the Presidium of the Republic from 1970 has created a new type of legal person, namely of economic companies with the participation of foreign capital.¹⁴ And although all these forms are available I do not think that they are adequate to deal with the international economic organizations of the CMEA member-states. A similar situation prevails in Romania, where there are specific rules concerning mixed companies,¹⁵ however these rules are not adapted to deal with the establishment of joint economic organizations of the CMEA countries. In Poland there are respective legal forms: in the case of "Spedrapid" and "Haldex" the form of share company and company with limited liability of the Commercial Code of 1934. These provisions fail, however, to provide an adequate legal framework for the joint organizations of the CMEA countries.¹⁶

Even less adapted to the needs of the international economic organizations of the CMEA member-states is the legal system of these states regulating the principles and forms of exercising economic activity or the so-called public law aspects of this activity, for that legal system is being developed to suit the requirements of the national market.

To sum up, it can be said that since national legislation was ill-suited to the needs of the international economic organizations of the CMEA member-states, it became necessary to create these organizations by way of intergovernmental agreements.

It can be forecast that most probably the present procedure of creating joint economic organizations by intergovernmental agreements

¹² Cf. A. BURZYŃSKI, *op. cit.*, pp. 168—169.

¹³ *Ibid.*, p. 161.

¹⁴ Official Journal of the Hungarian People's Republic, 1970, No. 66. Cf. E. LONTAI, *Recent Legislation in Hungary on Juridical Persons*, "Acta Juridica Academiae Scientiarum Hungaricae", vol. 13, 1971, p. 21 ff. See also A. BURZYŃSKI, *op. cit.*, p. 160.

¹⁵ Cf. A. BURZYŃSKI, *op. cit.*, pp. 163—167.

¹⁶ A. BURZYŃSKI, *op. cit.*, p. 169 draws rightly the attention to their "double anachronism". L. RÜSTER states that in no CMEA member-state there are legal premises for the conclusion by economic entities of contracts on the establishment of a joint economic organization within the framework of the CMEA. (*Funktion und Rechtsstellung internationaler Wirtschaftsorganisationen im Prozess der sozialistischen Wirtschaftsintegration*), Potsdam—Babelsberg, 1973, p. 93, note 174.

will also be applied in the future. Thus, A. Wasilkowski writes: "In theory it is also possible to establish joint enterprises on the basis of civil law agreements without the states signing international agreements to that effect. However the practice of the CMEA member-states is not going in that direction. The Complex Programme provides expressly for the conclusion of international agreements in connection with the establishment of international economic unions and enterprises. Enterprises created exclusively on the basis of a civil law agreement would have an international character only in the economic sense and not in the legal sense. From the point of view of both their national and legal status they would be subject to the legal system of a clearly defined state".¹⁷

A. Wasilkowski points out, quite rightly, that the system of property, the system of planning and management of the national economies of the socialist states prejudice to some extent the issue and make for the necessity of concluding intergovernmental agreements. Writes he: "While concentrating on the regulation of relationships between nationalized organizations, i.e. within mainly one system of property, these provisions [of administrative, financial law, etc. — parenthesis mine — J. J.] could not always be applied to regulate the activities of international enterprises which exceed that system of property."¹⁸ Among the many questions which must be solved on that level the author mentions: the general status of the enterprise in relation to the national economic plan and to the supervisory and controlling organs, current financing and crediting, customs duties and the relation to the state foreign trade monopoly.¹⁹

A. Wasilkowski does not imply that a joint economic unit *must* be created by way of an intergovernmental agreement. It can be established also on the basis of a civil law agreement concluded by economic units of the CMEA member-states. However, the states concerned must de-

¹⁷ A. WASILKOWSKI, *Socjalistyczna integracja gospodarcza* [Socialist Economic Integration], Warszawa 1974, p. 266 ff. The author made use of the idea which I presented in my article *Przedsiębiorstwa międzynarodowe* [International Enterprises], p. 114 ff.

Also B. W. Reutt is in favour of the creation of joint enterprises by way of intergovernmental agreements. See B. W. REUTT, *Międzynarodowe formy specjalizacji produkcji krajów RWPG* [International Forms of Specialization of Production of the CMEA Member-States], in: *Integracja ekonomiczna krajów socjalistycznych* [Economic Integration of the Socialist States], edited by P. Bożyk, Warszawa 1970, p. 171.

¹⁸ *Ibid.*, p. 267.

¹⁹ *Ibid.*

termine its relation to their economic systems by way of an inter-governmental agreement.²⁰

A similar opinion is held by L. Rüster. He believes that irrespective of the procedure of creating international economic organizations of the member-states of the CMEA, some problems connected with them must be settled by way of an intergovernmental agreement or by an agreement concluded by the organizations engaged in such a joint venture with the appropriate state organs to which these organizations belong.²¹

According to Rüster, the creation of international economic organizations by way of intergovernmental agreements will also in the future be the prevailing form.²² The creation of such organizations involve problems which can not be solved directly by those participating in the organizations, for they are subject to the authority of the supreme state organs of the states concerned.²³ These include, in the first place, all problems connected with the exercise of economic activity.²⁴ The most effective way of solving these problems is the conclusion of an inter-governmental agreement.²⁵

L. Rüster points out, quite rightly, that after the entry into force of the uniform rules concerning the international economic organizations of the CMEA member-states it will still be necessary to conclude inter-governmental agreements which would deal with concrete individual questions arising out of the specific nature of the various organizations.²⁶

While sharing the views expressed by A. Wasilkowski and L. Rüster, I would like to add that the conclusion of intergovernmental agreements is dictated also by practical requirements. For, if a joint organization of the CMEA member-states were the outcome of an agreement concluded by economic organizations only, it would have been forced to act in a similar manner as a national enterprise. Therefore, it would have been impossible to realize the idea which lays at the very basis of the concept of the division of labour and internationalization of production in the socialist commonwealth, the idea of creating an enterprise of a new type enjoying a special economic and legal status.

This, of course, does not mean that it is neither possible nor desirable

²⁰ *Ibid.*

²¹ L. RÜSTER, *op. cit.*, pp. 94—95.

²² L. RÜSTER: *Funktion und Rechtsstellung internationaler Wirtschaftsorganisationen im Prozess der sozialistischen ökonomischen Integration*, in: *Sozialistische ökonomische Integration. Rechtsfragen*, Berlin 1974, p. 109.

²³ *Ibid.*

²⁴ *Ibid.*, pp. 109—110.

²⁵ *Ibid.*, p. 110.

²⁶ *Ibid.*

to seek a unification of legal solutions concerning international economic organizations of the CMEA member-states. There are many problems which all these organizations share in common and therefore unification is both possible and desirable.²⁷

Thus, the opinion expressed by W. Kutikov to the effect that "the establishment of a joint enterprise takes place in accordance with the rules of private international law"²⁸ applies only to such cases as "Spedrapid".

The arguments in favour of the continuation of creation of international unions and joint enterprises by way of intergovernmental agreements do not apply to international economic partnership which have no legal personality. Such companies are and ought to be established by way of civil law agreements; most often this will be an agreement on the establishment of a civil law partnership.

2. The Establishment of International Economic Organizations in the Light of the Uniform Rules of 1976

The general provision concerning the establishment of international economic organizations is contained in paragraph 6 of the Uniform Rules of 1976. According to that provision an international economic organization can be established by way of an international agreement (intergovernmental agreement) or by way of a civil law agreement concluded by the participants of such an organization. The intergovernmental agreement can also serve as a basis for the conclusion of a civil law agreement by the participants. Such an intergovernmental agreement or civil law agreement which establishes an international economic organization constitutes a founding act (see para. 11, p. 1 of the Uniform Rules).

Detailed rules concerning the establishment of joint unions are

²⁷ Many authors propose the unification of the rules governing these matters. See, among others, M. VILAGHY, *Rechtliche und organisatorische Fragen der gemeinsamen Unternehmungen der RGWH-Staten, Thesen*, paper presented at the scientific conference in Szeged, 1978, p. 7; J. JAKUBOWSKI, *Integracja gospodarcza krajów RWPG a niektóre problemy unifikacji prawa* [The Economic Integration of the CMEA and Some Problem of the Unification of Law], "Państwo i Prawo", 1970, No. 5, p. 684; F. MADL, *Juristische Fragen der Entwicklung einer wirtschaftlichen Integration in den COMECON Ländern*, Stuttgart 1971, p. 63 ff.

²⁸ V. KUTIKOW, *Allgemeine Überlegungen über den Rechtscharakter gemeinsamer Betriebe im System des Rates für Gegenseitige Wirtschaftshilfe*, in: *Rechtsfragen der Integration und Kooperation in Ost und West*, West Berlin 1976, p. 235

contained in paragraphs 12 and 13 of the Uniform Rules Pursuant to paragraph 12, alinea 2 a union must be endowed with a charter. The charter develops the provisions of the founding act and can also contain additional provisions on internal regulations of the union's activity.

Paragraph 13 of the Uniform Rules define the moment at which the union can be considered as having come into being. A union established by way of an intergovernmental agreement comes into being according to the procedure laid down in the agreement. If the procedure has not been specified in the agreement and in all other cases, the union is being created in accordance with the procedure set forth in the legislation of the country of residence (ara. 13, alinea 1).

If the legislation of the country of the administration of the union calls for mandatory registration, the union must be registered also when, pursuant to the provision of paragraph 13, alinea 1 it is assumed that its establishment does not depend on the registration (see para. 13, alinea 3 of the Uniform Provisions).

The provisions of paragraph 47 of the Uniform Provisions define the terms which must be observed by the founding act and the charter of the joint enterprise. The majority of requirements is identical with those of the founding act and charter of a union. There are also some differences. Thus, as far as unions are concerned some provisions must be included into the charter, whereas for enterprises the Provisions call for inclusion into the founding act.

An international economic organization established by way of an intergovernmental agreement can have a charter which is adopted pursuant to the procedure laid down in the agreement. Consequently, the settlement of a given issue in the founding act can also take place in the charter (para. 68, alinea 2 of the Uniform Provisions).

An international economic organization established by way of an intergovernmental agreement comes into being with the entry into force of the agreement, unless the agreement states otherwise. When the company is established by way of a civil law agreement its coming into being coincides with the entry into force of the agreement (para. 68, alinea 3 of the Uniform Provisions).

A civil law agreement establishing an international economic organization is considered as having been concluded when all parties have deposited their signatures. It enters into force at the day of signing, unless another procedure is explicitly or impliedly provided for in the agreement itself. When the entry into force of such a civil law agreement is subject to its confirmation by the appropriate organs of one or several signatories, its entry into force takes place upon reception of the last confirmation (para. 68, alinea 4 of the Uniform Provisions).

3. The Acquisition of Legal Personality by International Economic Unions and by Joint Enterprises

Let us start by reminding the way in which the hitherto existing joint unions and enterprises of the CMEA member-states acquired their legal personality.

In the case of the joint enterprises "Spedrapid", "Haldex" and "Przyjaźń" a distinction must be made between the moment of conclusion of the founding agreement and the moment of acquisition by these enterprises of their legal personality. The limited liability company "Spedrapid" had been established by way of a civil law agreement which could not bestow on it legal personality; "Spedrapid" acquired legal personality on the basis of Article 171, paragraph 1 of the Polish Commercial Code as a result of its registration in the Commercial Register at the Court in Cracow. The share company "Haldex" had been established by way of an intergovernmental agreement, but it did acquire legal personality on the basis of Article 385, paragraph 1 of the Polish Commercial Code following its registration in the Commercial Register at the Court in Katowice. The joint enterprise "Przyjaźń" owed its establishment also to an intergovernmental agreement, but it too acquired legal personality at the moment of registration; pursuant to Article 3, alinea 1 of the agreement, the enterprise came into being at the day of the signing of the agreement, however the acquisition of legal personality coincided with the day of its registration in the register of state enterprises in Poland (Art. 3, alinea 2 of the agreement).

It is less easy to pinpoint the moment of acquisition of legal personality by the hitherto existing international economic unions. As pointed out in chapter IV, 3 of the Uniform Provisions, the date of coming into being of the unions Interatominstrument, Interatomenergo, Intertextilmash and Interchimvolokno is the date of the entry into force of the appropriate intergovernmental agreements, this coinciding with the reception by the depositary state of the last document confirming the agreement. On the other hand, as far as the acquisition of legal personality by the union is concerned, it seems that in this case it is possible to accept as an interpretative pattern the principle embodied in paragraph 13 of the Uniform Provisions, which although of a later date, agreed upon in 1976, can nonetheless be treated as an expression of the conception adopted by the CMEA member-states and can therefore be considered as an interpretative directive to be applied when the problem had not been solved, or in case of doubt, also with respect to international economic organizations established earlier. The provision

of paragraph 13, alinea 1 of the Uniform Provisions states that a union established by way of an international agreement comes into being in accordance with the procedure laid down in the agreement. Since in the case of the existing unions this coincides with the moment of entry into force of the agreement and since it can be considered that the unions owe their legal personality to the founding agreements, it could therefore be said that with the moment of entry into force of the agreement the union acquires also its legal personality.

At this juncture one may recall the content of paragraph 13, alinea 3: when the legislation of the country of place of administration of the union call for mandatory registration, the union is subject to this obligation also when, pursuant to the provision of paragraph 13, alinea 1, it is considered as having come into being irrespective of registration. In that case the registration has no constitutive features and it can be considered that unions did acquire legal personality at the moment of entry into force of the respective international agreements.

According to L. Rüster the establishment of an international economic organization cannot be made subject to its registration in the country of its place of administration, even though the legislation of that country may impart to the act of registration specific legal consequences. It would indeed constitute a violation of the principle of sovereign equality of the member-states of the CMEA if the creation by them, or pursuant to their agreement, of an international organization would depend on whether one of them (the country of the place of administration) acting unilaterally (i.e. by registration of a constitutive nature) accorded or refused to grant its permission.²⁹

Following the further internationalization of the legal status of joint unions and enterprises of the CMEA countries one could eventually envisage a form of international registration, for example with the Secretariat of the CMEA.³⁰ Such an international registration would be tantamount to the acquisition of the legal personality in all CMEA member-states as well as the acquisition of legal personality of an international character.

Since international economic partnerships are not entitled *ex definitione* to legal personality, their situation will not be discussed in this connection.

²⁹ L. Rüster, *op. cit.*, p. 95.

³⁰ Cf. J. JAKUBOWSKI, *Międzynarodowe zjednoczenia i przedsiębiorstwa krajów RWPG* [International Unions and Enterprises of the CMEA Member-States], in: *Socjalistyczna integracja gospodarcza* [Socialist Economic Integration], edited by Z. Klepacki, Warszawa 1974, p. 193.

4. The Legal Character of the International Economic Organizations of the Member-States of the CMEA

Unlike domestic economic organizations of the CMEA countries, CMEA international economic organizations are not international organizations under international public law. As a rule, they are considered to be legal persons under civil law.³¹

Such a legal qualification is acceptable, provided that the term "civil law" is properly interpreted. For, if the term "civil law" were to cover a concrete legal system, then the assertion that international economic organizations are legal persons under civil law could be accepted only with respect to organizations whose legal status is fully correlated with the legal system of a specific state. However, since as a rule the fundamentals of a personal status are defined in an intergovernmental agreement through "reference" to internal law only as to "subsidiary status", such an assertion could hardly be valid as a general statement.

This will not be the case if we consider the international economic organizations of the CMEA member-states to have legal personality under civil law understood as a set of legal principles and not as a distinct branch of a specific legal system. What we have in mind is not civil law as part of a legal system but a civil method of regulating social relations.³² Such a regulation can be a part of a national legal system and also a component of an international legislation — of a legislation *ad hoc*, as in the case of inter-state agreements settling up international economic organizations of the CMEA member-states, or of a general legislation proposed by some authors.

The "civil" character of the international economic organizations of the CMEA member-states is above all determined by the fact that they are, both from the economic and legal point of view, similar to national economic organizations (unions, enterprises, etc) which are the subjects of civil law.

In this connection the problem arises as to the proper interpretation of paragraph 9 of the Uniform Provisions, of 1976 which reads as follows:

"A union, joint enterprise and branch with legal personality is a legal person of the country of its domicile".

How is that rule to be interpreted?

³¹ This relates to international economic unions and joint enterprises and their branches endowed with legal personality.

³² Cf. A. STELMACHOWSKI, *Czy kryzys prawa cywilnego? [Is Civil Law in a State of Crisis?]*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny", 1974, No. 3, pp. 271—282.

One possibility would be to accept that the organization has always and only one legal personality, that of the country of the place of administration. In my view however, such an interpretation would be erroneous for there are international economic organizations which owe their legal personality not so much (or not only) to the law of the country of the place of administration, but to an inter-governmental agreement. In the case of some organizations the acceptance of the assertion that they came into being on the basis of the law of the country of the place of administration would cause considerable difficulties. Here is one example: under what provisions of Polish law has been created the joint spinning mill "Przyjaźń", which is neither a joint stock company, nor a cooperative, nor an enterprise falling under the Decree of 1950 on state enterprises.³³

It seems to me that another interpretation of paragraph 9 of the Uniform Rules would be more correct, namely that paragraph 9 represents a postulate (since the Uniform Rules have no normative character) calling upon the member-states of the CMEA that they recognize as legal persons not only international economic organizations established under their internal law, but also such international economic organizations which, although not set up that way, have their headquarters on the territory of that state.

What matters really is to remove all possible doubts that organizations set up by inter-governmental agreements enjoy all the rights of a legal person on the territory of the country of the place of administration.

A distinction must be made between the assertion that the international economic organizations of the CMEA member-states have a legal personality under civil law and the assertion that they are subjects of civil law. The term "subject of civil law" has a larger scope than the term "legal person under civil law", for apart from the latter it covers all physical persons and organizations which are only partially subjects of civil law.³⁴ Also a state can be subject of civil law. When using the term "subject of civil law" we draw the attention to the fact that we are dealing with somebody (or something) who (or which) can become a party in a civil law relationship.

Also when using the term "subject of civil law" we do not prejudge the issue as to whether we consider civil law to be a part of a specific

³³ Unified text: "Dziennik Ustaw" [Journal of Laws], 1960, No. 18, item 111.

³⁴ For example, under Polish law an "open company" and under English Law a "partnership". Cf. J. JAKUBOWSKI, *Przedsiębiorstwa w handlu międzynarodowym. Problematyka prawna* [Enterprises in International Trade. Legal Problems], Warszawa 1970, p. 97 ff.

legal system; what we have in mind is civil law in general, including civil law regulations arising out of international legislation.³⁵

In that understanding legal persons under civil law are only international economic unions and joint enterprises whereas international economic partnerships have no legal personality. This found its reflection in the Uniform Provisions Concerning the Creation and Activities of International Economic Organizations of the CMEA Member-States of 1976 (paras. 3—5). The question arises, however, international economic partnerships — which have no legal personality — certain elements of legal subjectivity.

An international economic partnership may dispose of separate assets enabling it to carry out its activity (para. 73 of the Uniform Provisions of 1976); it may carry out such activity under its own separate trade name (para. 69 of the Uniform Provisions of 1976), it may enjoy a considerable degree of organizational autonomy (paras. 70 and 71 of the Uniform Provisions of 1976). However, nothing in the Uniform Provisions of 1976 endows the international economic partnership with legal subjectivity. The partnership itself is not a legal subject; it represents only a specific form of cooperation of legal subjects for the purpose of carrying out joint activities, a form akin to a civil law partnership.³⁶

Having established that international economic unions and joint enterprises are legal persons, we must now examine what kind of legal person we have in mind. However, this is easier said than done.

While it is true that the Uniform Provisions of 1976 state in paragraph 9 that international economic unions and joint enterprises and their branches are legal persons of the country of residence, it must be said that this formula gives rise to serious problems of interpretation.

These interpretative difficulties arise, above all, with regard to the legal form of the international economic union and joint enterprise.

The generally prevailing view is that the legal form of of a company created under the traditional commercial law of the capitalist

³⁵ On problems of international legislation, see J. JAKUBOWSKI, *Prawo jednolite w międzynarodowym obrocie gospodarczym* [Unified Law in International Economic Intercourse], Warszawa 1972, p. 11 ff., p. 175 ff.

³⁶ As far as Polish law is concerned, see W. CZACHÓRSKI, *Prawo zobowiązań w zarysie* [Outline of the Law of Obligations], Warszawa 1968, p. 638 ff.; A. OHANOWICZ, J. GÓRSKI, *Zarys prawa zobowiązań* [Outline of the Law of Obligations], Warszawa 1970, pp. 478—482. The institution of a civil law partnership is known in the legal systems of other countries of the CMEA; in the USSR its counterpart is an agreement on joint activity (*dogovor o sovместnoy dejatel'nosti*); cf. Article 434 ff. of the Civil Code of the Russian FSSR.

times, still in force in one form or another in the member-states of the CMEA cannot be applied to international economic organizations of the CMEA.³⁷

In some countries (for example in Hungary³⁸) a special form of a company for enterprises with mixed capital has been created, however this was done in order to attract capital from capitalist countries, and these provisions are ill-suited to the requirements of cooperation between socialist states.³⁹

An international economic union is no doubt the counterpart of the industrial unions and similar organizations of the industry of the member-states of the CMEA.⁴⁰ However, I do not think that it is possible to accept the view that paragraph 9 of the Uniform Provisions of 1976 can be interpreted in such a way that the national provisions concerning industrial unions introduced in order to facilitate the management of the national economies of the CMEA member-states could be treated as adequate considering the needs which must be met when organizing the cooperation of the industries of the various CMEA member-states within the framework of an international economic union. On the other hand, it must be recognized that in the case of an international economic union we are dealing with a legal form created especially for the purpose of industrial cooperation between the member-states of the CMEA. This particular legal form outlined generally in the Complex Programme of 1971 and defined in a more detailed way in the Uniform Provisions of 1976 found its normative expression in the intergovernmental agreements which, so far, have been the origin of the various international economic unions.

The same applies to joint enterprises. It is generally accepted⁴¹ that the legal form of the state enterprise known to the law of all the CMEA member-states⁴² is ill-suited to the purposes of the joint enterprises of the CMEA member-states, for — as in the case of legal regulation of industrial unions — this legal structure constitutes the legal expression of the system management and intercourse within the framework

³⁷ Cf. among others, L. RÜSTER, *op. cit.*, p. 204; A. JANIK, *Osobowość prawna wspólnych przedsiębiorstw krajów RWPG* [The Legal Personality of the Joint Enterprises of the CMEA Member-States], "Państwo i Prawo", 1977, No. 5, pp. 94—95.

³⁸ A. BURZYŃSKI, *op. cit.*, pp. 161—163; A. JANIK, *op. cit.*, p. 94.

³⁹ A. JANIK, *ibid.*

⁴⁰ Cf. T. JANUSZ, *Funkcje gospodarcze zjednoczeń przemysłowych* [Economic Functions of Industrial Unions], Warszawa 1976, p. 27 ff.

⁴¹ A. JANIK, *op. cit.*, p. 95.

⁴² J. JAKUBOWSKI, *Przedsiębiorstwa w handlu międzynarodowym* [Enterprises in International Trade], p. 19 ff.

of the national economies of particular states. There is still another factor which makes the national legal rules inadequate for the purposes of joint enterprises, namely the fact that a joint enterprise is of the nature of a corporation, shared by the partners, whereas the legal form of a state enterprise of the national law of the CMEA member-states is not based on the idea of shares, but on the idea of allocation of assets (to the organization or enterprise).⁴³

Consequently, the joint enterprise of the CMEA member-states must be considered as a new legal form created specially for the purpose of joint economic activity of the CMEA member-states. This particular legal form outlined in the Complex Programme of 1971 and defined in greater detail in the Uniform Provisions of 1976 had found its normative expression in the intergovernmental agreements which, so far, had provided the legal basis for the establishment of the various joint enterprises. We share the view of the Bulgarian legal expert W. Tadjer that we are dealing here with a new type of company, different from the company of the capitalist type.⁴⁴

The interpretative problems outlined above can result in difficulties in the case of international economic unions and joint enterprises established not by way of an intergovernmental agreement or by way of reference to such agreement, but by way of an agreement between the participants of such an organization. This can be prevented only if the Uniform Provisions of 1976 will at some future date and after appropriate modification acquire a normative character.

Both the practice of concluding agreements on the establishment of international economic unions and joint enterprises as well as the Uniform provisions of 1976 (paras 3 and 4) demonstrate that the member-states of the CMEA consider the legal personality to be a useful legal construction in this respect as well as an indispensable condition

⁴³ Cf. A. WOLTER, *Prawo cywilne. Zarys części ogólnej* [Civil Law. Outline of the General Part], Vth ed., brought up to date by J. IGNATOWICZ, Warszawa 1977, p. 181. On the other hand, S. SZER, *Prawo cywilne. Część ogólna* [Civil Law. General Part], Warszawa 1967, p. 195; S. BUCZKOWSKI, Z. K. NOWAKOWSKI, *Prawo obrotu uspołecznionego* [The Law of Socialized Intercourse], Warszawa 1974, p. 77; S. GRZYBOWSKI, *System prawa cywilnego. Część ogólna* [The System of Civil Law. General Part], Wrocław—Warszawa—Kraków—Gdańsk 1974, p. 354, express doubts as to whether the term "legal person of the institutional type" can be applied to state enterprises.

⁴⁴ W. TADJER, *Voprosy na mezhdunarodnite stopanski organizacii na stranite členki nas SEV* [The Problems of International Economic Organizations of the Member-States of the CMEA], "Godišnik na Sofijskija Universytet, Yuridičeskij Fakultet", vol. 65, part 1, Sofia 1974, p. 282.

of their proper functioning. Thus, in this field the usefulness of this legal construction is fully recognized.⁴⁵

5. The Nationality of the International Economic Organizations of the CMEA Member-States

The internationality of international economic organizations endowed with legal personality (international economic unions and joint enterprises) is expressed, above all, by their international subordination. This means that they do not belong exclusively to one state (state of the place of administration or state of registration); we are dealing here with legal persons belonging to two or more states,⁴⁶ states whose economic organizations participate in such an international economic organization.

The thesis that the international economic unions and joint enterprises of the CMEA member-states have international "nationality" does not raise, in my opinion, any doubts whenever such organizations are being established by way of intergovernmental agreements. In such a case, both the intergovernmental procedure of creation of a legal personality as well as the solution by way of intergovernmental agreement of the fundamental problems of its functioning (and this is what happens when intergovernmental agreements are being concluded) preclude the treatment of such a legal person exclusively as belonging to the state on whose territory it has chosen to establish its headquarters. The situation differs from the situation of a so-called mixed company created on the basis of an agreement establishing a company with the participation of the capital of a socialist enterprise in a Western country or with the participation of the capital from a western state in a socialist country.

Of a different nature is the situation of international economic unions and joint enterprises established not by way of intergovernmental agreements but by way of agreements concluded directly between the

⁴⁵ L. RÜSTER, *op. cit.*, p. 130, note 238. While sharing the reservations as to whether the institution of legal personality is adapted to conditions of the Socialist system, he states that it is impossible to do without this institution in the case of international economic unions of the CMEA member-states.

⁴⁶ For the concept of nationality comp. W. LUDWICZAK, *Przynależność osób prawnych w świetle prawa prywatnego międzynarodowego* [*The Nationality of Legal Persons in the Light of Private International Law*], "Ruch Prawniczy, Ekonomiczny i Socjologiczny", 1968, No. 3; J. JAKUBOWSKI, *Przedsiębiorstwa międzynarodowe* [*International Enterprises*], p. 115 ff.

participating parties. The absence of governments representing states other than the state of the place of administration cause that we are dealing with a legal personality established in conformity with the legal system of the state of the place of administration and remaining within the confines of that system. It can be said that such an organization belongs to the state of the place of administration.

We are confronting a particular situation when, pursuant to paragraph 6, alinea 2 of the Uniform Provisions of 1976, an intergovernmental agreement provides the basis for the conclusion of a civil law contract between the participating parties. It seems that the question as to whether such an organization has a national or international state adherence can be answered only in the light of a given intergovernmental agreement. If such an agreement does not specifically imply international status, it must be concluded that the organization belongs to the state of the place of administration.

In view of the fact that some member-state of the CMEA accept, with regard to legal persons, the theory of registration, the question arises as to whether it is possible to apply always the criterion of the place of administration. It seems that in the case of international economic organizations of the CMEA member-states the determining factor is the place of administration and that this place — when there is no international status — determines the status of the organization. In the Uniform Provisions of 1976 there are many references to that place (paras 8, 9, 10 and others).⁴⁷

The problem of national or international status does not seem to arise with regard to international economic partnership because they are not legal subjects but rather a form of cooperation of legal subjects from various countries.

The question arises as to the practical importance of the nationality of the international economic organizations.

It has no importance for the question of their personal status or for their right to exercise legal functions. On the other hand, it determines to a significant extent their legal situation in the field of public law — administrative, financial, etc. The international status of such an organization results in the fact that it is being considered in the country of place of administration as something special and consequently it is not treated in all circumstances in the same way

⁴⁷ Comp. B. STEFANESCU, I. RUCAREANU, *La loi applicable au statut organique des organisations économiques internationales de type non gouvernemental des pays membres du CAEM*, "Revue Roumaine des Sciences Sociales, Sciences Juridiques", 1974, No. 2, p. 250.

as the national economic organizations. International status has therefore some influence on the legal situation of the organization.

6. The Personal Status of the International Economic Organizations of the CMEA Member-States

The concept of "personal status" defines a legal situation of a person, understood, however, in a narrow sense, as the overall legal regulation concerning rather is "existence" than its "functioning".

The range of problems of the personal status of legal persons include, apart from the problem of legal capacity and personal rights, such as trade mark rights, protection of personal dignity, etc, problems connected with their creation, with the definition of their legal character, with their internal structure, with the principles of their internal functioning, with the changes in their character, internal structure and internal functioning, with their liquidation, etc.

The nationality of a person must be distinguished from the concepts of "personal status" of legal persons. In the same way as the concept of personal status falls within the scope of conflict law, the concept of nationality has a broader frame of reference and plays a specific role with regard to the treatment of foreigners in various fields of the so-called public law, in particular in the field of public international law. The criterion of nationality makes it possible to distinguish between national legal persons and foreign legal persons, as well as between legal persons belonging to one foreign state and legal persons belonging to another foreign state; this may be of importance, for example, in the most favoured nation treatment.

The fundamental problem of the personal status of the international economic organizations of the CMEA member-states⁴⁸ is the problem of the legal system to be applied when determining in personal status of these organizations.

We were approaching the solution of that problem when stating that the international economic organizations of the CMEA member-states are not international organizations within the understanding of public international law (i.e. that public international law does not determine the personal status of these organizations) and that they are "legal persons of a civil law character".

As stated already above, in order to define the personal status of

⁴⁸ This concerns only international economic unions and joint enterprises. The specific nature — from that point of view — of international economic partnerships will be examined below.

the international economic organizations of the CMEA member-states one must distinguish between organizations established on the basis of contract concluded by two or more organizations of participating states and organizations established on the basis of an intergovernmental agreement.

Let us consider first the problem of the personal status of international economic unions and joint enterprises of the CMEA member-states created by way of contract concluded by participating organizations.

The question arises as to whether the parties to such an agreement have the capacity to determine the law applicable to the personal status of the organization. It seems that the choice of law is not admissible in this case, because under conflict law of the CMEA member-states the choice of law is admitted only with regard to contracts in the sphere of obligations, whereas it is difficult to treat a contract concluded in order to establish an international economic union or joint enterprise of the CMEA member-states as a simple obligation contract, such as a contract of sale or carriage. In this case there is the possibility of the so-called improper choice of law⁴⁹ consisting of the choice of the state in which the organization is due to acquire its legal personality. Pursuant to the rules applied in the case of conflict of law in some CMEA states, this must be the country of place of administration (for example: Bulgaria,⁵⁰ Poland,⁵¹ Romania⁵²); as far as other CMEA states are concerned, it can be a state other than the state of place of administration, provided that it is a member-state of the CMEA (for example: Czechoslovakia,⁵³ GDR,⁵⁴ USSR⁵⁵). However, since there will probably be no

⁴⁹ On the concept of the improper choice of law see J. SKĄPSKI, *Autonomia woli w prawie międzynarodowym prywatnym w zakresie zobowiązań z umów* [The Freedom of Choice in Private International Law as Regards Contractual Obligations], Kraków 1964, p. 26 ff.

⁵⁰ A. KOSHUHAROV, *Chronique de jurisprudence de la Cour arbitrale près de la Chambre de commerce bulgare*, "Journal du Droit International" (Clunet), 1976, No. 1, p. 160.

⁵¹ Article 9, paragraph 2 of the Law on Private International Law of 1965. Comp. J. JAKUBOWSKI, *Osoby prawne w polskim prawie prywatnym międzynarodowym* [Legal Persons in the Polish Private International Law], "Państwo i Prawo", 1969, No. 8—9, p. 268 ff.

⁵² B. STEFANESCU, I. RUCAREANU, *op. cit.*, p. 258.

⁵³ Para. 9, alinea 1 of the Code of International Trade of the Czechoslovak Socialist Republic of 1963.

⁵⁴ Para. 8 of the Law of 1975 on the application of the law to international relations of civil and family law, to labour law and also to international economic contracts.

⁵⁵ A. LUNTZ, *Conflict of Laws in International Sale: Theory and Practice*

cases whereby international economic organizations will be established in accordance with the law of one member-state of the CMEA with the place of administration in another member-state of the CMEA, it can be assumed that the personal status of such an organization is governed by the law of the state of place of administration. This is confirmed by paragraph 89, alinea 1 of the Uniform Provisions which states that with respect to problems which have not been settled or settled in an incomplete way by the Uniform Provisions, the situation of international economic unions and joint enterprises and their branches is determined by the law of the state of place of administration.

The application of this rule is, however, restricted by the provision, that such is the case if the founding act and character do not state otherwise. As emphasized above, it does not seem that when an international economic union or a joint enterprise is being established by way of an agreement signed by the participants it could legally be possible to choose another law.

The problem differs if the international economic organization follows the signing of an intergovernmental agreement. In that case, when defining the personal status of such an organization, it is necessary to take into account the content of that agreement. The agreement can define the personal status of the organization by mentioning the legal system which will determine its personal status. However, if the agreement itself defines — as had been the case generally hitherto — the fundamental aspects of the personal status, it must be accepted that its principal personal status is determined in the agreement itself, and that the national law indicated therein is applied subsidiarily. This derives, among other things, from paragraph 88 of the Uniform Provisions deciding, that to international organizations established by way of an intergovernmental agreement the provisions of the Uniform Provisions apply only in a supplementary way, i.e. only when the agreement does not stipulate otherwise. This relates equally to branches of unions or joint enterprises, including the case when the charter of a branch has been adopted or ratified by the parties to the intergovernmental agreement.

The legal system indicated by the intergovernmental agreement on the establishment of an international economic union or a joint enterprise is and most often will probably be the law of the country of the place of administration.

If the intergovernmental agreement fails to define the personal status:

of *Socialist Countries*, "Recueil des Cours de l'Académie de Droit International", 1965, vol. 1, p. 44—45 and 47.

of the organization and to define the national legal system which constitutes its personal status, it must be assumed — taking into consideration the remarks made above in connection with the situation of an organization established by contract of the participating parties, that the law which applies is the law of the country of the place of administration.⁵⁸

A particular situation arises when we are dealing with an intergovernmental agreement which is only a premise for the conclusion of a contract between the parties agreeing to establish an international economic union or a joint enterprise. It may be assumed that in such a case the intergovernmental agreement will restrict itself to aspects of public law determining the international status of such an union or enterprise without touching upon the personal status, for it can rightly be considered that this complicated way of creating an organization has the purpose of leaving the problems of personal status to the national legal system, which in practice means heaving it to the law of the country of the place of administration. We will therefore have an identical situation to that arising in the case of the establishment of an international economic organization by way of a contract between participants.

It has to be pointed out that pursuant to paragraph 89, alinea 1, sentence 2 of the Uniform Provisions no other law can be applied to a civil law contract on the establishment of an international economic organization than that applying to the organization itself. This provision can, by its very nature, find its application to legal persons, in whose case one can distinguish between a founding agreement and the legal person itself. This means that the provision deals with international economic unions and joint enterprises.

The above consideration do not apply to international economic partnerships in the case of which the problem of their personal status does not arise, since they are not legal subjects. They are not legal persons, but long-term contractual cooperation links. And that is why we are dealing not with the question of the law determining the personal status but with the question of the law regulating the contract.

In the case of establishment of an international economic partnership by way of an intergovernmental agreement (which can occur in the light of para. 68 of the Uniform Provisions of 1976), the agreement can

⁵⁸ B. STEFANESCU and I. RUCAREANU, *op. cit.*, p. 259 have no doubts that the Uniform Rules concerning the establishment and functioning of international economic organizations of 1976 are based on the principle of the law of the place of administration. The authors is of the view that this theory is more appropriate than the theory of the place of registration.

determine the law applying to the international economic partnership. If the intergovernmental agreement fails to do so, the same rules apply as in the case of the establishment of such a partnership by way of a contract between the participating parties themselves.

When an international economic partnership is being established by way of contract between the participating parties it must be stated, in the first place, that the contract can stipulate the law applicable to it. The conflict of law rules of the CMEA member-states admits, in principle, the choice of law by the parties of an obligation relationship, while the agreement on the establishment of an international economic partnership must be recognized as belonging to obligation relationships; the closest to such an institution of the law of obligations is the agreement on a civil law partnership (in the USSR — the contract on joint activity).

Taking into account the nature of the institution of the international economic partnership as a form of cooperation within the framework of the CMEA, it can be assumed that the parties to such a civil law contract on the establishment of such a partnership can submit in only to the law of one of the member-states of the CMEA. The Czechoslovak legal expert Z. Kucera expresses the view that the Czechoslovak participant to such a contract could not accept the application of any other law than the Czechoslovak law in the case of an international economic partnership acting on the territory of the CSSR.⁵⁷

In some legal systems certain problems may arise in connection with the choice of law for an agreement on the establishment of an international economic partnership. Thus, in the light of Article 25, paragraph 1 of the Polish Act on Private International Law of 1965⁵⁸ the efficacy of the choice of law depends on the existence of a link between the agreement and the law chosen by the parties. This would therefore mean that the parties to a civil law contract on the establishment of an international economic partnership could not submit such an agreement to the law of a member-states of the CMEA not participating in the company, with the exception of the rather improbable case that the participating parties decide to choose the territory of the non-participating state as the place of activity of the partnership.

In turn, on the ground of the law of USSR doubts could arise as to

⁵⁷ Z. KUCERA, *Zrizzovani a cinnost mezinarodnich hospodarskych organizaci v CSSR s hlediska ceskoslovenskeho mezinarodniho prava soukromeho* [The Establishment and Functioning of International Economic Organizations in the Czechoslovak Socialist Republic from the Point of View of the Czechoslovak Private International Law], "Pravnik", 1974, No. 11, p. 1082.

⁵⁸ "Journal of Laws", No. 46, item 290.

whether the choice of law is admissible, since the appropriate rule governing the conflict of law admits the choice of law exclusively in the case of "legal acts in the field of foreign trade". This rule is laid down in Art. 126 of the Principles of Civil Law of the USSR and the Federal Republics of 1961 and Article 566 of the Civil Code of the Russian Federation of the Soviet Socialist Republics of 1964. It seems however, that the terms "legal acts in the field of foreign trade" ought to be interpreted broadly⁵⁹ as acts embracing economic intercourse with foreign countries, which means that they cover also civil law contracts on the establishment of international economic partnerships of the CMEA member-states.

The term "international economic contract" (*internationaler Wirtschaftsvertrag*) used in paragraph 12 of the GDR law concerning the competence of the law in civil cases, family matters and labour relations as well as of the Law concerning international economic contracts of 1976 is broad enough and rises no doubts similar to those which could arise in connection with the above mentioned rules governing the conflict of law in the Soviet law.

Under normal circumstances the parties to a civil law contract concerning the establishment of an international economic company will determine the law governing the legal relationship existing under that contract. On the other hand, it may so happen that the contract does not contain a provision on the law competent to deal with the matter. In that case it must be considered what is the law (of which state) which will govern such a contract if the parties failed to choose the applicable law.

On the ground of the Polish Act on Private International Law the competent law would be the law of the state where the contract was concluded (Art. 29). The same principle would apply pursuant to the law of the USSR (Art. 125 of Principles of Civil Legislation of the USSR and the Federal Republics, Art. 566 of the Civil Code of the RFSSR), the law of the GDR (para. 12, alinea 2 of the above mentioned Act of 1975), and the law of CSSR (para. 10, alinea 3 of the Act on International Private and Process Law of 1963).

The Uniform Provisions of 1976 (para. 89, alinea 1) provide that

⁵⁹ This is how the term in Russian *vnešnetorgovaja sdelka* (foreign trade contract, transaction) has been translated in the Polish edition of the Principles of the Civil Legislation of the USSR and the Union Republics and of the Civil Code of the Russian Republic, published in 1977 by the Institute of State and Law of the Polish Academy of Sciences. USSR science applies also a broader interpretation; comp. M. M. BOGUSLAVSKIJ, *Meždunarodnoe častnoe pravo*, Moskva 1974, pp. 149—150.

when the Provisions fail to resolve the issue or furnish only a partial solution, and provided that the founding act does not stipulate otherwise, the law competent to deal with international economic partnerships will be the law of the participating state entrusted with the management of the current affairs of that partnership.

Since the Uniform Provisions have no normative character, the question arises as to whether the provision of paragraph 89, alinea 1 of that document can apply in spite of the difference in the contents of the appropriate rules governing the conflict of law in the national legislation, some of which have been quoted above. The answer to that question would have been negative, however, since under normal circumstances the contract on the establishment of the partnership would stipulate the law which is competent, or would refer to the Uniform Provisions (then indirectly to para. 89, alinea 1) which would mean that the competent law is that chosen by the parties. The matter is of no great practical importance.

The scope of personal status does not cover the relations of international economic organizations of the CMEA member-state with other persons. These relations are subject, as far as the competence of the law is concerned, to general rules governing the conflict of law. This is stated explicitly in paragraph 89, alinea 2 of the Uniform Provisions which provides that alinea 1 of that paragraph dealing with applicable law does not infringe upon the legal regulation of legal acts concluded by international economic unions, or joint enterprises or their branches as well as those concluded by parties participating in international economic partnerships within the normal performance of their joint economic activity.

In the contractual relations between international economic organizations and between these organizations and the national economic organizations of the CMEA member-states the law which applies in the first place is that of the common economic law of these states.⁶⁰

7. The Capacity of International Economic Organizations

The capacity of an international economic organization is determined by the competent law mentioned above.

In order to take a closer look on the problem of capacity of inter-

⁶⁰ On the concept of a common economic law of the CMEA member-states see J. JAKUBOWSKI, *Prawo jednolite w międzynarodowym obrocie gospodarczym. Problemy stosowania* [Uniform Law in the International Economic Intercourse. Problems of Application], Warszawa 1972, p. 175 ff.

national economic organizations of the CMEA member-states it is necessary to deal separately, on the one hand, with international economic unions and joint enterprises and, on the other hand, with international economic partnerships.

Intergovernmental agreements establishing international economic unions and joint enterprises define, as a rule, broadly the capacity of these organizations.

The agreement on the establishment of "Interatominstrument" signed on February 22, 1972 states that the union has the right to enter into agreements, buy, hire, rent or sell property, as well as to appear in court and participate in arbitration proceedings (Art. 4, alinea 1).

Of great importance is the provision of Article 4, alinea 3 which states that the union and its branch offices are endowed with legal capacity necessary to carry out their functions on the territories of all states-parties to the agreement. We have here therefore a certain degree of internationalization of the legal capacity of the union.⁶¹ Similar provisions can be found in the agreements setting up other international economic unions.

In the agreement on the establishment of "Haldex" signed April 16, 1959 it is stated only that "Haldex" is a share company established under Polish law.

The statutes of these organizations contain certain provisions concerning the external representation of international organizations, i.e. their capacity to undertake legal acts. Article 26, alinea 2d of the statute of "Interatominstrument" provides that the director of the union concludes on behalf of the union the necessary contracts for the implementation of its objectives and plans. Similar clauses are to be found in the statutes of "Intertextilmash", "Interatomenergo", "Interchimvolokno" and "Intervodoočistka".

It appears therefore that the provisions of the intergovernmental agreements concerning establishment of international economic unions and joint enterprises as well as of the statutes attached thereto and dealing with the capacity of these organizations are drafted in a rather general way, thus leaving considerable scope to the action of the law of the state of the place of administration, which is being referred to, as a rule in the following context: such organizations are of the law of the state of the place of administration. In this connection the question arises as to whether the restrictions of legal capacity which can be found in the law of the member-states of the CMEA can be applied to international economic organizations. This relates e.g. to the principle

⁶¹ Cf. A. JANIK, *op. cit.*, p. 93.

of the so-called special capacity of legal persons.⁶² It seems that the general answer is affirmative.⁶³ In order to avoid the application of national provisions which are ill adapted to the needs of international economic organizations, it is advisable to insert more elaborate provisions concerning legal capacity into the intergovernmental agreements setting up such organizations and in the statutes attached thereto.

In the Uniform Provisions of 1976 the problem of legal capacity is dealt with even in a scantier way. The document in question restricts itself to stating that international economic unions and joint enterprises are legal persons (paragraphs 3 and 4).

According to L. Rüster, international economic unions should have, apart from normal legal capacity under civil law, the right to conclude with the CMEA and other international economic organizations agreements on mutual cooperation and coordination. In the opinion of L. Rüster, what is at stake, is "the creation of a specific legal capacity in the international economic and legal field of the organizations belonging to the system of international economic organizations of the CMEA member-states".⁶⁴

Contrary to international economic unions and joint enterprises, international economic partnerships are not endowed with legal capacity, hence the problem of their legal capacity and of their capacity to undertake legal acts does not, in principle arise. While the partnership

⁶² On the principle of the special capacity of legal persons in Polish law see, among others, J. KOSIK, *Zdolność państwowych osób prawnych w zakresie prawa cywilnego* [The Capacity of State Legal Persons in the Field of Civil Law], Warszawa 1963; S. SZER, *op. cit.*, pp. 201—202; A. WOLTER, *op. cit.*, pp. 207—210; A. STELMACHOWSKI, *Czy kryzys osoby prawnej?* [Is There a Crisis of the Legal Person?], "Ruch Prawniczy, Ekonomiczny i Socjologiczny", 1968, No. 3, p. 199; J. WISZNIEWSKI, *Specjalna zdolność prawna osób prawnych* [Special Legal Capacity of Legal Persons], "Studia Prawnicze", vol. 26/27, 1970, p. 326; *Kodeks cywilny. Komentarz* [Civil Code. Commentary], Warszawa 1972, vol. 1, pp. 114—115; Z. K. NOWAKOWSKI, *Prawo obrotu uspołecznionego* [The Law of Socialized Intercourse], Warszawa 1974, pp. 56—60; S. GRZYBOWSKI, *op. cit.*, pp. 358—359.

⁶³ H. WIEMANN, *Zivilrechts- und Handlungsfähigkeit der gemeinsamen Unternehmen sozialistischer Staaten und ihre internationale Respektierung*, "Staat und Recht", 1964, No. 1, p. 144, considered that in the case of such organizations the adoption of the principle of special legal capacity was fully justified. L. Rüster believes that their legal capacity must be broad. See L. RÜSTER in the collective work: *Das System der sozialistischen ökonomischen Integration. Grundriss*, Berlin 1976, p. 118. The 61 Session of the Executive Committee of the CMEA held in 1976 adopted a recommendation (§ XV. 2) that member-states accord to international economic unions and joint enterprises at least the same rights as those granted to similar national economic organizations. This ought to apply also to legal capacity.

⁶⁴ L. RÜSTER, *op. cit.*, p. 119.

has its own assets, these assets are managed by one of the participants (para. 73, alinea 3 of the Uniform Provisions of 1976). Hence, to the outside world it is the managing party which serves as the partnership's representative:

8. Recognition of the Legal Personality of the International Economic Organizations of the CMEA Member-States

Considering the problem of recognition of the legal personality of an international economic union or joint enterprise of the CMEA member-states⁶⁵ it is necessary to distinguish between the following three situations:

1. recognition in the state of the place of administration,
2. recognition in the states whose organizations participate in such a joint organization and
3. recognition in other states.

Ad. 1. Under normal circumstances, no problem arises in connection with the recognition of the legal personality of an international economic union or joint enterprise in the country of the place of administration. When such an organization is being created on the basis of an intergovernmental agreement with the participation of the country of the place of administration, as is normally the case, the law of that country has subsidiary application as regards the law governing the personal status of the organization; hence the problem of recognition does not arise. The situation is identical when the organization is not established on the basis of an intergovernmental agreement, provided that all requirements under the law of the state of the place of administration have been respected.

Some problems could arise if the intergovernmental agreement of two or more CMEA member-states did set up an international economic union or joint enterprises with its headquarters in a country not participating in the agreement. In that case the problem of the respect by state organs of the country of the place of administration of the agreement concerning its legal personality could arise. Such a situation is however rather unlikely to occur. It seems that it would be advisable to establish such an organization in full conformity with the local law.

One may also consider the possibility of establishing by economic organizations of the various CMEA member-states of a joint economic

⁶⁵ We exclude from our considerations international economic partnerships, since they have no legal personality.

organization in a state not belonging to the CMEA. It has to be emphasized that in such a case — apart from the case of its establishment in Yugoslavia⁶⁶ — we would be dealing with an organization not identical, from the legal point of view, with an international economic union or joint enterprise as understood in the present paper. It would then be necessary to adopt as a legal form the form provided for in the law of the state of the place of administration.

Ad 2. Equally, no problem arises as far as recognition is concerned of the legal personality of an international economic union or joint enterprise of the CMEA member-states in a country other than the country of the place of administration, but whose economic organization (or organizations) take part in such a union or enterprise. When an international economic union or joint enterprise is set up by way of an inter-governmental agreement, recognition is being decided by the agreement itself and by the law of the state of the place of administration having subsidiary status. No problem arises also when these organizations originate from a contract between the parties to a union or a joint enterprise, since the member-states of the CMEA, following the general practice,⁶⁷ adhere to the principle of automatic recognition of the legal personality of a foreign legal person, provided that it had emerged from the personal status. And in spite of the fact they adopt as the personal status either the principle of the place of administration (like Bulgaria, Poland or Romania) or the principle of registration (like Czechoslovakia, GDR and USSR), this discrepancy is of no consequence in the case of international economic unions or joint enterprises since such unions or enterprises are, as a rule, set up on the basis of the law of the country which offers them its hospitality. The respect of the requirements of the law of the country of the place of administration when creating such organizations is therefore tantamount to the recognition of their legal personality.

Ad 3. In principle, the last statement finds its application to the recognition of the legal personality of international economic unions and joint enterprises of the CMEA member-states in the remaining countries, since also in these countries the generally accepted principle is that of automatic recognition, provided that the legal person was

⁶⁶ Para. 7, alineas 1 and 2 of the Uniform Provision of 1976 deals with the establishment of international economic partnerships in the member-states of the CMEA and in Yugoslavia.

⁶⁷ Cf. J. JAKUBOWSKI, *Przedsiębiorstwa w handlu międzynarodowym* [Enterprises in International Trade], pp. 216—219. The principle of automatic recognition of legal personality of foreign legal persons is today a principle of public international law. Comp. R. WIEMANN, *op. cit.*, p. 151.

established properly in the light of the law governing the personal status. As a rule, the personal status is either the law of the country of the place of administration or the law of the country of registration. Complications could, however, arise in the case of application of the theory of control if it would be recognized in the country of forum that international economic unions or joint enterprises with headquarters in one of the member-states or the CMEA and set up under the law of that state remain under the dominating control of a person from another CMEA member-state. However, the application of the theory of control to an organization with parity participation, such as international economic union or joint enterprise, does not seem likely. Furthermore, it may be pointed out that the theory of control makes sense not so much as regards the problem of recognition of legal personality of legal persons, as with respect of problems of their admissibility to act, of the regulation and control of their activity.⁶⁸

In the case of the establishment of an international economic union or joint enterprise on the basis of an intergovernmental agreement to which the state of forum is not a party, the fact that the agreement covers partly the problem of legal personality should not constitute an obstacle to the recognition of the legal personality of such an organization, since the provisions of that agreement ought to be recognized in the country of forum as forming part of the legal system of the country of the place of administration, provided — as is normally the case — that the latter is a party to the agreement.

9. Results and Conclusions

It results from our considerations that international economic organizations of the CMEA member-states are of the nature of civil law institutions in the broadest meaning of that term. In the case of international economic unions and joint enterprises we are dealing with counterparts of civil law persons in various countries, bearing similar names (union, trust, company, etc.) and in the case of international economic companies — with counterparts of permanent contractual links similar to an agreement on the creation of a civil law company (in the law of the USSR — to an agreement on joint activity). This civil law feature distinguishes them from the intergovernmental economic organizations of the CMEA member-states.

⁶⁸ Cf. J. JAKUBOWSKI, *Przedsiębiorstwa w handlu międzynarodowym [Enterprises in International Trade]*, p. 235.

They differ from national economic organizations by their international identity. The nationality of international economic unions and joint enterprises⁶⁹ is not to be related with only one state, the state of the place of administration, but with all states whose organizations participate in these organizations.

It would be difficult to accept as a general proposition the view that the international economic organizations of the CMEA member-states have always an international personal status,⁷⁰ not only because of the fact that, at present, this cannot apply to organizations established by way of contracts signed by the parties concerned, but also because of the fact that even organizations set up on the basis of intergovernmental agreements have their legal status defined only partially in these agreements, and thus application of the law of the country of the place of administration as a so-called subsidiary law is not excluded. However, the process of internationalization of the personal status of such organizations will lead gradually to a situation under which the thesis about the international character of their personal status will be fully justified. It will then be possible to refer to the international economic unions and joint enterprises of the CMEA member-states a "international legal persons" without reservations or restrictions.

As a matter of principle, the internationalization of the personal status of the international economic unions and joint enterprises of the CMEA member-states seems desirable, whereas the linking of that status with a specific national legal system should be left to particular cases.

The analysis of the problem of recognition of the legal personality of the international economic unions and joint enterprises of the CMEA member-states has led us to the conclusion that, in principle, no difficulties should arise in this connection.

⁶⁹ As stated above, there is no problem of nationality of an international economic partnership, as this applies only to an organization endowed with legal personality.

⁷⁰ These considerations do not apply to international economic partnerships, not endowed with legal personality.

A propos des zones grises en matière d'engagements internationaux

par MARIA FRANKOWSKA

1. Les difficultés dans la délimitation du *corpus iuris gentium* sont bien connues. Les incertitudes en la matière apparaissent le plus souvent en rapport avec l'existence et la définition des principes généraux de droit reconnus par les nations civilisées et des normes coutumières qui, par leur nature, se prêtent difficilement à une détermination précise. Rares ont cependant été les hésitations dans la délimitation du droit international liées à l'identification dans les relations internationales des traités internationaux. Malgré un large échange d'opinions concernant la nature de certains actes, comme c'était récemment le cas de l'Acte final de la Conférence sur la Sécurité et la Coopération en Europe¹, l'accent n'a pas été mis assez fortement dans la doctrine sur la multiplication dans les relations internationales d'engagements et de prises de positions dont on ne peut pas dire sans une analyse détaillée et individuelle s'ils appartiennent à la catégorie de traités internationaux.

Cet article aura pour but d'attirer l'attention sur ce phénomène — nouveau quant à certains aspects formels, mais surtout quant à sa dimension internationale — d'étudier ses causes, ses formes et, enfin, ses conséquences.

2. Il existe, semble-t-il, trois principales raisons du développement dans la pratique internationale des actes pour lesquels l'incertitude persiste s'ils appartiennent ou non à la catégorie de traités internationaux. Il est hors de doute que cet état de choses s'explique principalement par le développement de la communauté internationale et l'expansion des rapports entre les sujets du droit des gens. L'intensité, la spécialisation et

¹ K. SKUBISZEWSKI, *Akt końcowy KBWE w świetle prawa międzynarodowego* [Acte final de la Conférence sur la Sécurité et la Coopération en Europe et le droit international], «Państwo i Prawo», 1976, n° 12, pp. 3-16, *ibid.* une large bibliographie. Les principaux actes internationaux dont la nature juridique suscite des doutes sont énumérés par F. MÜNCH, *Comments on the 1968 Draft Convention on the Law of the Treaties. Non-binding Agreements*, «Zeitschrift für Ausländisches Öffentiliches Recht und Volkerrecht», 1969, n° 1, pp. 5-6.

le rythme accéléré des échanges internationaux conduisent à l'affaiblissement, sinon l'éclatement, du cadre traditionnel de la coopération internationale². Nous avons surtout à l'esprit l'essor des accords internationaux en forme simplifiée dont la portée s'estompe dans des engagements de diverse nature³. Un grand rôle dans ce processus revient incontestablement à la décentralisation des compétences pour conclure des traités qui, caractéristique pour tous les Etats contemporains, constitue une réponse aux exigences des échanges internationaux et se trouve en même temps à l'origine du phénomène étudié.

La deuxième cause de cet état de choses se situe sur le plan du contenu des normes du droit international relatives à la notion de traité. Celle-ci est définie par le droit coutumier codifié, en grande partie, par la Convention de Vienne sur le droit des traités (entrée en vigueur le 27 janvier 1980) qui constitue l'expression la plus officielle des normes liant les Etats dans ce domaine⁴. La définition du traité international figure à l'art. 2 de la Convention, mais elle est complétée par ses articles 3 et 11.

Selon l'alinéa 1 (a) de l'art. 2 de la Convention, «l'expression "traité" s'entend d'un accord international conclu par écrit entre Etats et régi par le droit international, qu'il soit consigné dans un instrument unique ou dans deux ou plusieurs instruments connexes, et quelle que soit sa dénomination particulière». Cette définition a été rédigée, comme il est indiqué dans ce même article, aux fins de la Convention de Vienne. On peut cependant lui attribuer une signification plus large dans le contexte de l'art. 3 de la Convention d'après lequel les Etats parties de la Convention ne mettent pas en cause la force obligatoire ni des accords conclus entre les Etats et autres sujets du droit international, ni des accords conclus entre ces autres sujets, ni des accords qui n'ont pas été conclus par écrit.

Les articles précités permettent de dégager éléments constitutifs

² Voir M. LACHS, *Some Reflections on Substance and Form in International Law in a Changing Society. Essays in Honour of P. C. Jessup*, New York—London 1972, pp. 99 - 112.

³ Cf. p. ex. C. CHAYET, *Les accords en forme simplifiée*, «Annuaire Français de Droit International», 1957, pp. 3 - 13; P. F. SMETS, *La conclusion des accords en forme simplifiée*, Bruxelles 1969; M. FRANKOWSKA, *Umowy międzynarodowe w formie uproszczonej* [*Les accords internationaux en forme simplifiée*], Wrocław 1981 (surtout deuxième partie).

⁴ La Cour internationale de justice a reconnu ce caractère des normes de la Convention de Vienne (même avant son entrée en vigueur) dans quelques arrêts et notamment dans l'affaire de Namibie (CIJ Recueil, 1971, § 48), dans celle de la zone islandaise de pêche (CIJ Recueil, 1973, § 38) et dans celle du plateau continental de la mer Egée (CIJ Recueil, 1978, § 96).

d'un traité international: premièrement, il faut qu'il y ait un accord, c'est-à-dire une manifestation de volontés concordantes des parties; deuxièmement, il doit s'agir d'un accord entre sujets du droit international; troisièmement, cet accord doit être régi par le droit international.

Il importe également de mettre en considération les éléments supplémentaires, de caractère négatif, contenus dans la Convention. Or, selon la Convention de Vienne, la forme de l'acte n'a aucune importance. Il en ressort que le traité peut être conclu par écrit ou sous une autre forme, qu'il peut être consigné dans un ou plusieurs instruments et que sa dénomination ne joue aucun rôle. Plus encore, le mode d'expression du consentement à être lié est également sans importance car, selon l'art. 11 de la Convention, le consentement peut être exprimé «par tout autre moyen convenu».

Nous avons déjà observé que la Convention de Vienne ne spécifie pas tous les éléments permettant de conférer à un «accord international» la qualité de traité. Or, elle passe sous silence un autre élément reconnu universellement depuis longue date comme un trait constitutif de tout traité international à savoir l'intention des parties de produire des effets de droit soit par la création ou l'abrogation de droits ou d'obligations soit par l'établissement d'un rapport de droit international. Cet élément constitutif du traité international fut inclus dans les projets de codification présentés par les rapporteurs de la Commission du droit international — J. L. Brierly⁵, H. Lauterpacht⁶ et G. Fitzmaurice. Ce dernier posait comme condition de l'existence du traité l'intention de créer de droits et obligations ou de rapports régis par le droit international⁷. Après une discussion, la Commission n'a gardé de cette proposition que le passage relatif à la soumission au droit international, modifiant ainsi sensiblement l'idée originale⁸. La formule retenue par la Commission fut reprise par H. Waldock⁹ dans son projet et elle a

⁵ «ILC Yearbook», 1959, vol. II, p. 223.

⁶ «ILC Yearbook», 1954, vol. II, p. 123.

⁷ «ILC Yearbook», 1956, vol. II, p. 107 et 117.

⁸ L'interprétation de ce passage dans le contexte des travaux préparatoires peut conduire à une conclusion différente, cf. à cet égard J. ŚLADKOWSKI, *Podleganie traktatów prawu międzynarodowemu* [La soumission des traités au droit international], «Sprawy Międzynarodowe», 1975, n° 4, pp. 104-106. Au cours de la Conférence de Vienne, H. WALDOCK, mettait en doute l'opinion de la Commission selon laquelle la qualification «régie par le droit international» comporte l'intention des parties d'établir des droits et des obligations, cf. *UN Conference on the Law of Treaties. Official Records, First Session 1968*, p. 34.

⁹ «ILC Yearbook», 1962, vol. II, p. 31.

survécu à toutes les propositions d'amendements présentées pendant la conférence de Vienne¹⁰.

Bien que le qualificatif «régi par le droit international» soit très utile dans la délimitation du champ d'application de la Convention de Vienne, sa valeur est moindre lorsqu'on cherche des critères permettant de distinguer les traités internationaux des autres engagements. En effet, le problème de savoir si un accord (un acte, un document) appartient à la catégorie des traités n'est pas lié au critère de la soumission au droit international. Si la manifestation de volontés concordantes aboutit à la conclusion d'un traité, celui-ci sera régi *ipso iure* par le droit international et si les parties conviennent autrement, il n'y aura pas de doutes qu'il ne s'agit pas de traité international. Il s'avère donc que le critère de la soumission au droit international a surtout pour objectif d'exclure du champ d'application de la Convention des accords que les Etats parties ont voulu soumettre à un régime autre que celui du droit international (ou qu'ils ont soustrait aux règles de droit en général), mais il n'a pas de valeur dans l'identification d'un traité. Pour être régi par le droit international, un traité doit d'abord exister. En effet, un traité constitue l'expression de l'intention concordante des parties ayant la qualité de sujet de droit international de créer des droits et obligations ou, plus largement, d'établir un rapport de droit international. Pour plus de précision, il faut également ajouter que l'analyse d'un accord international devient parfaitement inutile si sa nature juridique ne soulève pas de doutes compte tenu de la précision de volontés extériorisées par les parties (c'est notamment le cas des traités solennels et de plusieurs accords en forme simplifiée).

Pour conclure, le contenu des normes relatives à la notion de traité et notamment l'absence dans le droit international de conditions quant à la forme du traité et quant au mode d'expression du consentement à être lié, ne permet pas d'opérer une distinction générale des traités et d'autres formes d'engagements. Cette constatation ne signifie nullement que les normes du droit international définissant le traité sont trop confuses pour s'en servir. En l'occurrence, le droit international est suffisamment développé pour trancher chaque litige relatif à l'existence d'un traité ou pour qualifier un acte de traité. La qualification *ad casum* est donc toujours possible. Mais, et ceci importe avant tout, les normes du droit international ne permettent pas d'opérer une distinction géné-

¹⁰ La Suisse proposait notamment de compléter la définition par le passage relatif à l'instauration des droits et des obligations, Doc. A/CONF.39/C.1/L.384. Pour les détails, voir également S. E. NAHLIK, *Kodeks prawa traktatów* [Le code du droit des traités], Warszawa 1976, p. 68.

rale. Cette lacune contribue notamment au développement du phénomène étudié.

Cette affirmation nous amène à la troisième raison de l'existence dans la pratique internationale des actes dont la nature juridique reste mal déterminée. Il s'agit de l'absence dans la vie internationale d'organes qui qualifieraient les actes internationaux *ex officio*, en permanence et d'une manière générale. Le Secrétariat de l'Organisation des Nations Unies, qui enregistre les actes internationaux, ne remplit dans aucun cas cette fonction. L'enregistrement au Secrétariat de l'ONU ne peut pas conférer la qualité de traité à un acte qui ne la possède pas et, inversement, l'absence d'enregistrement ne prive pas un traité de sa valeur juridique¹¹. Il est assez évident que les Etats ne soumettent pas à l'enregistrement des actes dont la nature soulève de doutes.

L'absence de mécanismes nationaux d'identification des actes internationaux contribue également à l'effacement des limites qui séparent les traités des autres engagements internationaux.

Exceptionnellement, la loi américaine du 22 août 1972 (Case-Zablocki Act) oblige le secrétaire d'Etat à présenter au Congrès le texte de tout accord autre que le traité (traité au sens du droit constitutionnel américain, c'est-à-dire un accord soumis au Sénat pour approbation avant sa ratification¹²). L'adoption de ladite loi est le fruit de marchandages entre le Congrès et l'Exécutif américain dans la lutte pour l'influence en matière de politique étrangère et on peut facilement deviner que les membres du Législatif ne visaient pas la création d'un mécanisme permettant d'identifier les actes internationaux. Cependant, compte tenu des tendances qui se sont manifestées au Congrès en matière de politique étrangère¹³, surtout au cours des années soixante-dix, on peut espérer que ce mécanisme fonctionnera d'une manière efficace.

¹¹ Selon la note du Secrétariat de l'ONU figurant dans chaque volume du *Recueil des traités* des Nations Unies «l'enregistrement d'un instrument présenté par un Etat Membre n'implique, de la part du Secrétariat, aucun jugement sur la nature de l'instrument...».

¹² Cette loi exige la transmission au Congrès de chaque accord autre qu'un traité dans le délai de 60 jours à partir de sa conclusion. Pour le texte, voir *Legislation on Foreign Relations*, vol. I, Washington 1977, p. 388.

¹³ Cf. J. F. MURPHY, *Treaties and International Agreements Other than Treaties: Constitutional Allocation of Power and Responsibility Among the President, the House of Representatives and the Senate*, University of Kansas Law Review, vol. 23, 1975, pp. 221-248; J. B. REHM, *Making Foreign Policy Through International Agreement*, dans: *The Constitution and the Conduct of Foreign Policy*, éd. F. O. WILCOX, R. A. FRANK, New York 1976, p. 130 et suiv. L'exécution de ladite loi fait souvent l'objet d'interpellations, cf. notamment «American Journal of International Law», n° 2, 1978 (vol. 72), pp. 391-398 et n° 1, 1979 (vol. 73), p. 130.

Pour réaliser le devoir imposé au département d'Etat par la Loi de 1972, on a formulé les critères dont doit s'inspirer le conseiller juridique du département d'Etat qui établit la distinction entre les accords internationaux et autres engagements. Ces critères doivent obligatoirement être utilisés par toutes les missions diplomatiques américaines, tous les départements et autres agences du gouvernement fédéral responsables pour la transmission au département d'Etat des accords qu'ils concluent¹⁴. Les critères retenus sont les suivants: 1) l'intention des parties d'être liées en droit international (il s'agit notamment de l'intention de contracter une obligation juridique et non politique ou personnelle); 2) l'importance de l'engagement (ce critère est assez vague et on souligne qu'il doit faire l'objet d'une appréciation raisonnable)¹⁵; 3) le degré de précision des engagements garantissant la possibilité d'exiger l'exécution des obligations contractées (*enforceability*); 4) la présence d'au moins deux parties; 5) la forme (on observe que la forme de l'accord n'a pas de grande signification, mais l'absence de traits formels d'un accord comme p.ex. les clauses finales, la date de la signature, la date de l'entrée en vigueur, etc. constitue une preuve éventuelle pour démontrer qu'il n'existe pas de volonté de la part de l'Etat de contracter une obligation de droit international).

Il semble que ces critères, bien que destinés à servir les besoins intérieurs américains, revêtent une importance universelle.

3. Les incertitudes si un acte peut être qualifié de traité apparaissent dans plusieurs contextes dont trois méritent une attention particulière. Premièrement, il s'agit de la situation dans laquelle l'intention des parties d'établir entre elles un rapport de droit international n'est pas entièrement claire. Dans certains cas, l'imputation de l'engagement aux Etats ne soulève pas d'objections puisque le consentement à être lié a été exprimé par les personnes qui, selon le droit international, sont habilitées à représenter l'Etat à l'extérieur¹⁶. Le doute persiste

¹⁴ Ces critères figurent dans le document du département d'Etat américain du 9 mars 1976 adressé à toutes les missions diplomatiques — texte chez R. R. MAJAK, *International Agreements: An Analysis of Executive Regulation and Practices*, Washington 1977 (U.S. Government Printing Office), pp. 50 - 52. L'obligation de communiquer au département d'Etat tous les accords conclus a été étendue à toutes les agences gouvernementales par la loi du 13 juin 1977, texte dans «*American Journal of International Law*», n° 4, 1977 (vol. 71), p. 765.

¹⁵ Selon le document en question, il s'agit de *matter of degree*. D'après l'exemple cité (R. R. MAJAK, *op. cit.*, p. 51), la promesse de vendre à un Etat une carte géographique ne constitue pas un traité international, mais la promesse de vendre à un Etat un million de cartes le sera probablement; il est difficile de constater dans quel moment la transaction s'est transformée en traité.

¹⁶ Cf. l'art. 7, al. 2(b) de la Convention de Vienne sur le droit des traités.

toutefois si l'intention de ces représentants était un engagement politique, une déclaration d'intentions politiques qui ne créent pas d'obligations juridiques ou bien envisageaient-ils d'établir un rapport de droit international dont la violation serait contraire au principe *pacta sunt servanda* et entraînerait toutes les conséquences prévues à cet effet par le droit international.

Les accords dont l'identification pose des problèmes sont une affaire courante dans les relations interétatiques contemporaines. Ces accords sont conclus sous diverses formes, à divers échelons et ont un caractère bi- ou multilatéral. Les principaux exemples de ce genre d'accords sont: les communiqués conjoints publiés à l'issue des pourparlers de personnes autorisées à représenter un Etat sans produire des pleins pouvoirs, les déclarations communes et les affirmations rendues publiques à l'issue des visites officielles des chefs d'Etat ou de gouvernement¹⁷, les procès-verbaux des pourparlers, les *gentlemen's agreements*¹⁸ ou les textes convenus dans la correspondance diplomatique sous forme d'échange de notes, celui-ci pouvant soit terminer une étape de la négociation ayant en vue la conclusion d'un traité, soit constituer un accord en forme simplifiée (le passage d'un stade à l'autre est parfois difficilement perceptible).

¹⁷ Parmi de nombreux exemples, on peut mentionner la pratique des Etats socialistes de publier des déclarations à l'issue des visites au sommet des plus hauts représentants du Parti et de l'Etat entre deux pays. Il est assez significatif à cet égard que les premiers secrétaires des partis communistes de deux pays représentent à l'extérieur leurs Etats respectifs (p.ex. la déclaration sur le renforcement et sur l'approfondissement de la coopération entre le Parti Ouvrier Unifié Polonais et le Parti Communiste Roumain, signée le 19 mai 1977 à Varsovie par le premier secrétaire du POUP, Edward Gierék, et par le secrétaire général du PCR, Nicolae Ceausescu). Il est également intéressant de tenir compte des déclarations bilatérales entre les dirigeants de pays socialistes et occidentaux au cours des années soixante-dix, cf. notamment K. ROZALICZ, *Dwustronne deklaracje polityczne Polski i krajów zachodnich w latach siedemdziesiątych* [Les déclarations politiques bilatérales entre la Pologne et les pays occidentaux au cours des années 1970], «Sprawy Międzynarodowe», 1977, nos 7-8, pp. 7-19. Parmi les engagements multilatéraux de ce genre qui ont suscité des hésitations quant à leur nature juridique, rappelons, à titre d'exemple, la déclaration commune en matière de terrorisme international publiée le 18 juillet 1978 à Bonn à l'issue de la conférence au sommet de sept pays occidentaux, cf. R. KRAIEM, *International Terrorism: Hijacking — Joint Statement on International Terrorism by the Participants at the Bonn Economic Summit Conference*, «Harvard International Law Journal», vol. 19, 1978, n° 3 et l'interpellation à ce sujet dans le Sénat américain — «American Journal of International Law» 1979 (vol. 73), n° 1.

¹⁸ Voir R. SONNENFELD, *Gentleman's agreement a umowy międzynarodowe* [Gentlemen's agreement et les traités internationaux], «Sprawy Międzynarodowe», 1958, n° 12, pp. 44-54.

C'est le contenu des engagements précités qui joue un rôle décisif dans la détermination de leur nature juridique. S'ils sont formulés d'une manière vague et rédigés en termes trop généraux, on peut estimer qu'il n'était pas l'intention des parties de conclure un traité¹⁹.

De même, l'expression d'intentions ou la détermination d'objectifs communs, ayant parfois une grande importance politique, ne suffisent pas pour constituer un traité²⁰. Bien que les dispositions de certains traités soient parfois imprécises ou trop générales, la valeur du critère de contenu ne doit pas être contestée car l'analyse du contenu et du caractère juridique d'un accord n'est décisive que lorsque apparaissent des hésitations quant à la nature juridique d'un accord²¹. Par contre, si l'existence d'un traité n'est pas mise en doute, le critère de contenu perd sa valeur.

Il faut également souligner que les engagements interétatiques n'ayant pas la qualité de traité et ne liant pas juridiquement peuvent néanmoins engendrer certaines conséquences juridiques²². En tout cas, on ne peut pas prétendre que leur exécution dépende entièrement de la bonne volonté des intéressés. En effet, les Etats peuvent se sentir liés politiquement et moralement et l'absence de la force juridique obligatoire ne préjuge en rien de la stabilité de ce genre d'engagements²³. Selon K. Skubiszewski, ce ne sont pas les sanctions, mais l'intention des Etats de respecter les engagements contractés qui constitue la mesure de l'efficacité des actes internationaux²⁴.

Ceci dit, on ne doit pas négliger l'importance de la distinction entre traités, qui lient juridiquement, et autres formes d'engagements. Les relations internationales situées dans la zone grise qui sépare les déclarations politiques des rapports juridiques conventionnels étant difficiles à étudier, il faut néanmoins distinguer clairement les prises de positions politiques subjectives et les obligations juridiques de nature objective²⁵. L'effacement intentionnel des différences entre ces deux catégories,

¹⁹ D. P. O'CONNELL, *International Law*, 1970, p. 199 et suiv. Voir également A. D. MCNAIR, *The Law of Treaties*, Oxford 1961, p. 6.

²⁰ D. P. MYERS, *The Names and Scope of Treaties*, «American Journal of International Law», 1957 (vol. 51), n° 3, p. 605.

²¹ Cf. P. REUTER, *Introduction au droit des traités*, Paris 1972, p. 44.

²² Il peut s'agir notamment de l'application du principe d'estoppel, cf. F. MÜNCH, *op. cit.*, p. 11. Voir également O. SCHACHTER, *The Twilight Existence of Nonbinding International Agreements*, «American Journal of International Law», 1977 (vol. 71), n° 2, pp. 296 - 304.

²³ L'Acte final de la Conférence sur la Sécurité et la Coopération en Europe constitue un bon exemple à cet égard.

²⁴ K. SKUBISZEWSKI, *op. cit.*, p. 16.

²⁵ D. P. MYERS, *op. cit.*, p. 603.

attrayant à court terme, n'est favorable ni au renforcement de la réglementation juridique, ni au respect du droit international.

Malgré ces constatations, il reste que le critère de contenu pose quand même nombre de problèmes dans la détermination de la nature juridique d'accords internationaux. Plusieurs actes internationaux font l'objet d'opinions divergentes aussi bien de la part de la doctrine que de la part des Etats intéressés²⁶. Par conséquent, il existe toujours une large catégorie d'accords dont la nature juridique n'est pas définitivement déterminée.

Dans le deuxième contexte où apparaissent les incertitudes quant à la nature de certains accords, il s'agit de savoir si l'engagement peut être imputé aux Etats. Nous pensons surtout aux cas où les volontés concordantes sont extériorisées sous une forme qui ne suscite pas de doutes, mais il n'est pas certain si l'accord lie les Etats en tant que tels ou seulement les personnes morales de deux ou plusieurs Etats. Pour être plus précis, il ne s'agit pas des cas où le consentement à être lié a été exprimé par les représentants n'ayant pas produit des pleins pouvoirs ou ayant dépassé leurs compétences. Il ne s'agit non plus d'accords conclus par des sujets autres que les sujets de droit international. Il s'agit des accords dans lesquels le caractère juridique des parties contractantes est incertain, comme p.ex. les arrangements administratifs conclus par des ministres autres que le ministre des Affaires étrangères qui ont provoqué plusieurs controverses dans la doctrine²⁷.

²⁶ Citons, à titre d'exemple, les accords de Yalta ou de Potsdam. Récemment, les controverses entre la Grèce et la Turquie relatives à la déclaration commune des premiers ministres des deux pays ont été tranchées par la CIJ dans son arrêt sur le plateau continental de la mer Egée; selon la CIJ, «sur la question de la forme, la Cour peut se borner à faire observer qu'il n'existe pas de règle de droit international interdisant qu'un communiqué conjoint constitue un accord international...», CIJ Recueil, 1978, § 96.

²⁷ Parmi la minorité d'auteurs qui refusent aux arrangements administratifs le caractère de traité international figurent notamment L. BITTNER, *Die Lehre von den Völkerrechtlichen Vertragsurkunden*, Leipzig 1925, p. 6 et D. P. O'CONNELL, op. cit., p. 206. On serait cependant en désaccord avec les réalités, si l'on prétendait que l'identification des arrangements administratifs en tant que traités ne suscite jamais de doutes. Le problème se pose surtout dans le cas où certains ministères (ou organes équivalents), qui jouissent en droit national de la compétence pour une activité économique, prennent des engagements en leur propre nom et non au compte de l'Etat. Une telle situation se produit notamment dans le processus d'intégration des pays du CAEM, p.ex. en ce qui concerne la coordination et la spécialisation de la production, cf. à cet égard O. KAMPA, *O neposredstvennoj svjazi meždu promyšlennymi ministerstvami stran-členov SEV*, dans: *Mežvedomstvennye svjazi v uslovijah socialističeskoj integracii*, sous la dir. de E. T. USENKO, Moskva 1973, pp. 43 - 47. Le livre précité est le fruit d'une conférence

Ce problème ayant toutefois été élucidé par la pratique des Etats, nous n'envisageons pas de lui consacrer de développements détaillés. Ce qui nous intéresse cependant, c'est la qualification d'accords conclus par les agences dont les liens avec les pouvoirs étatiques demeurent imprécis (p.ex. les organismes scientifiques à l'échelle nationale, les offices de télévision et de radiodiffusion d'Etat, les agences étatiques de presse)²⁸, d'accords conclus au niveau des commissions mixtes ou d'autres organes communs de ce genre²⁹ ainsi que d'accords conclus par les personnes dont les compétences peuvent varier selon divers droits nationaux et qui ne jouissent pas de la présomption de compétence pour exprimer le consentement d'un Etat à être lié (p.ex. les chefs de commission du plan dans les pays socialistes)³⁰. Certains accords passés par les chefs

internationale organisée sous les auspices de l'Institut de l'Etat et du Droit de l'Académie Soviétique des Sciences en 1971. Selon l'opinion qui dominait au cours de la conférence, les arrangements en question constituent des traités internationaux. Voir également N. W. MIRONOV, *Pravovye formy socialističeskoj integracii*, Moskva 1977, chapitre 1^{er}.

²⁸ Selon McNair, il est nécessaire d'établir dans tels cas si un organe ou un autre organisme agissent au nom du gouvernement ou s'ils possèdent une personnalité morale distincte du gouvernement, ce qui leur interdirait d'agir au nom du gouvernement. Toutefois, l'auteur met en garde contre une généralisation trop facile et constate que chaque cas exige un examen détaillé à la lumière des faits concrets, A. D. MCNAIR, *op. cit.*, p. 21. Il convient également de rappeler que selon l'étude de Majak le Congrès n'est pas avisé de l'existence de plusieurs *agency-to-agency agreements*, car les fonctionnaires responsables pour leur conclusion ne se rendent pas compte qu'il s'agit de traités internationaux, cf. R. R. MAJAK, *op. cit.*, p. 41. Dans la pratique internationale des pays socialistes, on rencontre des accords internationaux dans lesquels aussi bien les Etats que leurs organismes économiques sont parties contractantes et par conséquent la qualification de ces accords est double, cf. A. N. TALALAEV, *Socialističeskaja ékonomičeskaja integracija i voprosy teorii meždunarodnogo dogovora*, dans: *Mežvedomstvennye svjazi...*, p. 65.

²⁹ Cf. H. DE FIUMEL, *Znaczenie międzynarodowych umów o specjalizacji i kooperacji produkcji krajów członkowskich RWPG* [L'importance des accords internationaux sur la spécialisation et la coopération de la production des pays membres du CAEM], «*Studia Prawnicze*», 1972, n° 32, p. 9.

³⁰ Cf. M. FRANKOWSKA, *Zum Charakter der die Ergebnisse der Plankoordination der RGW-Mitgliedsländer fixierenden Dokumente*, dans: *Zusammenarbeit der RGW-Länder in der Planung*, sous la dir. de M. KEMPER, Berlin (Est) 1977, p. 116 et suiv. Pour ce qui est des arrangements conclus au niveau inférieur de ministère, voir N. W. MIRONOV, *op. cit.*, chap. V; A. WASILKOWSKI, *Socjalistyczna integracja gospodarcza* [L'intégration économique socialiste], Warszawa 1974, p. 64, et K. WOLFKE, *Międzynarodowe prawo środowiska* [Le droit international de l'environnement], Wrocław 1979, pp. 21 - 27.

militaires durant les opérations de guerre appartiennent également à cette catégorie⁸¹.

Dans tous les cas précités, il s'avère impossible de distinguer *a priori* les traités internationaux des accords qui ne lient pas les Etats en tant que sujets du droit des gens. La qualification de ces engagements peut s'opérer seulement *ad casum* et elle peut être différemment appréciée par les parties intéressées. La situation ressemble donc aux incertitudes relatives à la détermination de volontés des parties contractantes.

Il existe enfin un troisième contexte de difficultés dans la qualification de certains accords. Celles-ci apparaissent lorsque l'intention des Etats intéressés d'instituer une obligation de droit international ne suscite pas de doutes, mais il manque de clarté si cet engagement prend la forme d'un traité.

A première vue, cette approche peut soulever des objections et paraître défectueuse par hypothèse notamment si l'on admet l'axiome selon lequel, conformément au droit international, ni la forme de l'accord, ni les procédures de sa conclusion n'ont pas une portée juridique. Tel n'est cependant pas le cas et les controverses relatives à la quatrième source du droit international, à savoir les résolutions des organisations internationales, constituent la meilleure preuve de l'existence du problème⁸².

Selon les partisans de cette quatrième source du droit des gens, parmi les nombreuses résolutions adoptées par les organisations internationales, on peut distinguer celles qui ont le caractère de recommandations non obligatoires et celles qui lient juridiquement les Etats membres et constituent pour eux la source des droits et des obligations internationaux. Sans contester l'exactitude de cet avis, il faut néanmoins observer que de doutes surgissent parfois si une résolution constitue une source de droit distincte ou s'il s'agit d'un accord en forme simplifiée. Ces hésitations se rapportent aux résolutions ayant toutes les apparences d'une source de droit autonome à savoir aux résolutions des organisations internationales qui sont juridiquement obligatoires pour les Etats membres (quoiqu'une résolution puisse, à une étape préliminaire, revêtir la

⁸¹ Voir surtout R. R. BAXTER, *Armistices and Other Forms of Suspension of Hostilities*, «Recueil des Cours de l'Académie de Droit International», Vol. I, 1976, p. 370 et suiv.

⁸² Sur l'existence de cette source autonome du droit international, voir K. SKUBISZEWSKI, *Uchwały prawotwórcze organizacji międzynarodowych* [Les résolutions de caractère législatif des organisations internationales], Poznań 1965, *ibid.* une abondante bibliographie. Cf. également A. WASILKOWSKI, *Zalecenia Rady Wzajemnej Pomocy Gospodarczej* [Les recommandations du Conseil d'Assistance Economique Mutuelle], Warszawa 1969 (surtout chap. 1^{er}).

forme d'une recommandation ne comportant pas d'effets juridiquement obligatoires), qui comportent pour les Etats des droits et des obligations précis, rédigés en termes détaillés³³, qui sont adressés aux Etats *pro foro externo* et ne font pas partie du droit interne des organisations internationales et qui sont adoptées d'une manière qui implique une volonté concordante de toutes les parties intéressées. Il s'agit des résolutions adoptées à l'unanimité, par la méthode *contracting-out* ou de celles qui nécessitent une acceptation ultérieure (on exclut donc les résolutions majoritaires qui après leur adoption sont directement obligatoires pour tous les Etats membres).

A cette catégorie de résolutions appartiennent notamment certaines recommandations du Conseil d'Assistance Economique Mutuelle (CAEM)³⁴, les annexes à la convention de Chicago adoptés par le Conseil de l'Organisation de l'aviation civile internationale³⁵, les dispositions arrêtées par l'Assemblée de l'Organisation mondiale de la santé conformément à l'art. 81 de l'OMS³⁶ ou les règlements du Congrès météorologique mondial³⁷. Plusieurs facteurs penchent en faveur de l'opinion selon laquelle ces résolutions constituent un accord international en forme simplifiée et non une source autonome du droit international.

Le fait que ces résolutions sont négociées au sein d'une organisation

³³ Une rédaction en termes trop généraux et vagues semble conduire A. Wasilkowski à refuser aux recommandations du CAEM le caractère de traité international, *ibid.*, p. 274 et suiv. Voir également de cet auteur *Aspects juridiques de l'intégration économique socialiste*, Académie de droit international, Colloquium, vol. 1, Leyde 1972, pp. 312 - 313.

³⁴ Voir surtout E. T. USENKO, *Formy regulirovanija socialističeskogo meždunarodnogo rozdelenija truda*, Moskva 1965, pp. 394 - 395. Selon Usenko, appartiennent à cette catégorie seulement celles des recommandations qui contiennent un minimum d'éléments indispensables pour l'existence d'un traité dont surtout la désignation des sujets et de l'objet de l'obligation ainsi que le délai de son exécution. Une opinion différente est exprimée par H. DE FIUMEL, *Rada Wzajemnej Pomocy Gospodarczej* [Le Conseil d'Assistance Economique Mutuelle], Warszawa 1967, p. 103 et suiv.

³⁵ K. SKUBISZEWSKI, *Uchwały...* [Les résolutions...], p. 63 et suiv. ne reconnaît pas à ces annexes le caractère de traité international. Une opinion similaire figure chez J. KOLASA, *On the Sources of International Law — Towards a Conception of Adopted Law*, «Polish Yearbook of International Law», Vol. IX, 1977 - 78, pp. 110 - 114.

³⁶ K. SKUBISZEWSKI, *Uchwały...* [Les résolutions...], p. 72 et suiv. leur refuse le caractère de traités internationaux. Un autre avis est exprimé par H. BLIX, *Treaty-Making Power*, London 1960, p. 293 et suiv. ainsi que par G. TUNKIN, *Zagadnienia teorii prawa międzynarodowego* [Problèmes de la théorie du droit international], Warszawa 1964, p. 165.

³⁷ La pratique de cette organisation est étudiée par K. SKUBISZEWSKI. *Uchwały...* [Les résolutions...], p. 78 et suiv.

internationale et que leur texte définitif est adopté sous forme de résolution d'une organisation internationale n'empêche nullement de considérer ces résolutions comme traités internationaux. En effet, plusieurs traités dont la nature juridique ne suscite aucun doute sont élaborés d'une manière qui ressemble beaucoup à l'adoption des résolutions, p.ex. les conventions de l'Organisation internationale du travail ou les conventions adoptées par l'Assemblée générale de l'ONU³⁸. La différence essentielle se ramène au mode d'expression par l'Etat du consentement définitif à être lié par une résolution (un traité d'après notre avis). Les résolutions ayant indubitablement le caractère de traités internationaux, à cela près qu'adoptés sous les auspices d'une organisation internationale, comportent expressément des clauses relatives à la ratification, à la signature ou à une autre forme d'acceptation. Dans les résolutions de caractère douteux, on remarque l'absence de ces clauses. Mais l'absence de ces clauses ne semble pas avoir d'importance pour qualifier un acte de traité international. En effet, ce qui est décisif dans les deux cas pour l'existence d'un traité, c'est l'expression par l'Etat du consentement définitif pour contracter une obligation énoncée dans le texte d'une résolution. Si, dans le premier cas, le mode d'expression du consentement est nettement précisé dans le texte du traité, dans le deuxième cas il figure dès le début dans l'acte constitutif de l'organisation internationale.

Dans les système *contracting-out*, le consentement est exprimé d'une manière tacite. Ce procédé amène certains auteurs à la conclusion que dans le cas où les Etats extériorisent expressément leur volonté seulement pour refuser une obligation qui découle d'une résolution et gardent le silence s'ils désirent contracter une obligation, il est difficile d'assimiler ces résolutions aux traités³⁹. Mais, rappelons-le, la Convention de

³⁸ Cf. notamment M. JACHS, *Współczesne organizacje międzynarodowe i rozwój prawa międzynarodowego* [Les organisations internationales contemporaines et le développement du droit international], «Państwo i Prawo», 1963, n° 12 et H. BOKOR-SZEGŐ, *The Role of the United Nations in International Legislation*, Budapest 1978, pp. 69 - 155.

³⁹ Cf. K. SKUBISZEWSKI, *Uchwały...* [Les résolutions...], p. 143. Ce même auteur cite abondamment des opinions contraires, voir note 5 à la page 141 et note 6 à la page 142. Voir également W. MORAWIECKI, *Funkcje organizacji międzynarodowej* [Les fonctions de l'organisation internationale], Warszawa 1971, p. 187, selon lequel le système *contracting-out* situe en réalité la source de la force obligatoire de la réglementation extérieure non dans la résolution d'un organe international, mais dans la volonté concordante des Etats membres, bien que cette volonté soit exprimée dans ce système d'une manière tacite par l'absence de refus ou de réserves envers les dispositions adoptées. Dans le même sens va l'opinion de R. SONNENFELD, *Uchwały Rady Bezpieczeństwa. Zagadnienia prawne* [Les

Vienne sur le droit des traités (art. 11) autorise tout mode d'expression du consentement à être lié par un traité pourvu qu'il soit préalablement convenu. Par conséquent, on doit admettre que dans le cas du système *contracting-out* ce consentement peut revêtir la forme tacite d'autant plus que cette procédure d'acceptation figure expressément dans les statuts des organisations qui l'utilisent.

Selon une autre opinion, les résolutions en question ne peuvent pas être considérées comme traités parce qu'on ne leur applique pas le droit des traités⁴⁰. Cet argument est-il vrai et convaincant? Il est une chose bien connue que le régime juridique de certaines résolutions (que nous assimilons aux traités) s'écarte de quelques solutions typiques employées dans la pratique conventionnelle. Il est en effet inadmissible et impossible d'opposer de réserves à ces résolutions ou de les dénoncer; en outre les amendements ou la suspension de l'application de ces résolutions sont soumis à un régime particulier. On ne doit cependant pas en déduire que ces résolutions soient soustraites au droit des traités. En effet, la dérogation au droit des traités ne concerne que ses règles ayant un caractère subsidiaire et complémentaire. La majorité des normes contenues dans la Convention de Vienne ne trouvent leur application que lorsque les parties n'ont pas disposé autrement⁴¹. La dérogation à ces règles dans certains cas témoigne que les parties ont adopté des dispositions particulières.

Les auteurs de la Convention de Vienne ont expressément accordé aux Etats membres d'une organisation internationale le droit de s'écarter des règles en question. Ils ont en effet consacré d'une façon générale (art. 5) la primauté des normes adoptées par les Etats membres d'une organisation internationale sur les normes de la Convention de Vienne⁴². Les arguments débattus ne seraient conformes à la vérité que si l'on pouvait prouver que les normes impératives du droit des traités ne s'appliquent pas aux résolutions des organisations internationales étudiées que nous assimilons aux accords internationaux en forme simplifiée. Parmi ces normes impératives du droit des traités, d'ailleurs peu nombreuses, figurent notamment le principe *pacta sunt servanda*, la norme selon laquelle un Etat ne peut pas invoquer les dispositions de son droit

résolutions du Conseil de sécurité. Problèmes juridiques, Warszawa 1979, pp. 24 - 26.

⁴⁰ Cf. K. SKUBISZEWSKI, *Uchwały...* [Les résolutions...], p. 139 et suiv.

⁴¹ Cf. S. E. NAHLIK, *Kodeks...* [Le code...], p. 86 et suiv.; V. HAAK, «Unless the treaty otherwise provides» and similar clauses in the LLC'S 1966 Draft Articles on the Law of Treaties, «Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht», 1967, Special Number, p. 541 et suiv.

⁴² Les développements chez S. E. NAHLIK, *Kodeks...* [Le code...], p. 83 et suiv.

interne pour justifier la non-exécution d'un traité, la règle générale d'interprétation (art. 31 de la Convention de Vienne), la règle générale concernant les Etats tiers (art. 34), les normes relatives à la nullité et certaines règles concernant l'extinction des traités dont surtout celles qui portent sur le changement fondamental de circonstances, sur le conflit avec une norme de *jus cogens* ou sur la violation du traité par l'autre partie. On n'a jamais prouvé, semble-t-il, que ces normes impératives du droit des traités ne soient pas applicables aux résolutions étudiées.

Tout en étant partisan de l'avis selon lequel les résolutions en question constituent des accords internationaux en forme simplifiée, on ne doit pas oublier que la qualification de ces résolutions n'est pas toujours une chose facile. Dans la multitude de résolutions et d'engagements au sein d'une organisation internationale, les résolutions étudiées constituent une catégorie où s'efface dans la pratique la limite entre traités et autres engagements internationaux n'ayant pas cette qualité⁴³.

4. Les trois sortes de difficultés relatives à la détermination de la nature juridique de certains actes internationaux ne s'excluent pas mutuellement. Au contraire, elles peuvent se cumuler dans la pratique. Ainsi, les hésitations peuvent concerner simultanément l'intention des parties de créer un rapport de droit international et l'imputation de l'acte à l'Etat. Les doutes peuvent également apparaître dans l'appréciation si un acte institue une obligation juridique suffisamment précise, si un acte doit être assimilé à un traité ou à une résolution internationale⁴⁴. La délimitation des trois sortes de difficultés est simplement une question de méthode et l'appréciation des problèmes sera différente selon chacun des trois contextes examinés.

Pour ce qui est de la distinction entre la politique et le droit, le besoin de fixer une limite entre ce qui est politique et ce qui lie juridiquement dépendra de la nature générale des relations existant entre les parties d'un engagement et de l'importance des affaires réglementées. Il faut donc qu'en cas difficiles revêtant une certaine importance il y ait le

⁴³ Parmi les exemples des actes qui soulèvent des doutes à tous les égards mentionnés en matière de qualification en tant qu'accords internationaux figurent les «accords de Luxembourg» entre les pays membres de la CEE en 1966. Pour une analyse détaillée de la nature juridique de ces «accords» et une abondante bibliographie, voir F. BELLANGER, *Contribution à l'étude de la nature juridique des «Accords de Luxembourg»* du 29 janvier 1966, «Nederlands Tijdschrift voor Internationaal Recht», 1968, pp. 179 - 186. Cf. également R. SONNENFELD, *Ograniczenia kompetencji państw Europejskiej Wspólnoty Gospodarczej* [Les limitations de la compétence des Etats de la Communauté Economique Européenne], Warszawa 1973, pp. 47 - 49, 76 - 77.

⁴⁴ Ces doutes apparaissent souvent quant aux recommandations du CAEM, cf. plus haut, notes 33 et 34.

moins de doutes possibles quant à la nature juridique des engagements réciproques. Sinon surgit une nouvelle source de conflits. Toutefois, dans la réalité nous sommes souvent obligés d'accepter que dans les situations douteuses les engagements imprécis et incertains ne cessent de se multiplier.

Quant à la deuxième catégorie de difficultés, il s'agit le plus souvent de répondre à la question si un accord déterminé constitue un traité ou un contrat de droit civil. Cette réponse est étroitement liée au régime de la responsabilité pour la non-exécution des obligations contractées. L'expérience de la coopération des pays du CAEM fournit de nombreux exemples témoignant de l'importance de la distinction entre les traités et autres engagements⁴⁵. Les négligences dans ce domaine se répercutent négativement sur la stabilité et la qualité de la coopération internationale.

En ce qui concerne le troisième groupe de problèmes, il semblerait que l'établissement de différences entre les résolutions des organisations internationales et les traités n'ait qu'une portée théorique. En effet, l'Etat a le devoir d'exécuter ses obligations et peu importe qu'elles résultent d'un traité ou des résolutions obligatoires des organisations internationales⁴⁶. Cette opinion est parfaitement justifiée si l'on considère que l'obligation de l'Etat existe en droit international⁴⁷. Il est une affaire interne de chaque Etat comment envisage-t-il d'appliquer une résolution (un traité). On remarque cependant que la place des résolutions des organisations internationales dans l'ordre juridique interne des Etats est généralement moins précise que celle des traités. Dans plusieurs pays, la législation et la jurisprudence concernent surtout la place des traités en droit national et plutôt exceptionnellement celle des résolutions internationales⁴⁸. Qualifier certaines résolutions de traités

⁴⁵ Cf. E. T. USENKO, *O pravovoj prirode neposredstvennyh svjazej po linii ministerstvu i vedomost' stran-členov SĖW*, dans: *Mežvedomstvennye svjazi...*, p. 10 et A. WASILKOWSKI, *Socjalistyczna integracja...* [*L'intégration économique...*], pp. 63 - 68.

⁴⁶ Cf. A. WASILKOWSKI, *Zalecenia...* [*Les recommandations...*], p. 280 et suiv.

⁴⁷ La Cour Internationale de Justice a constaté dans son arrêt relatif aux essais nucléaires français qu'une obligation internationale peut résulter même d'une déclaration unilatérale à condition que la contraction de cette obligation soit l'intention de l'Etat déposant cette déclaration (CIJ Recueil, 1974, § 43). La Cour a constaté que c'est le principe de la bonne foi qui constitue l'une des règles principales régissant la naissance et l'exécution des obligations juridiques quelle que soit leur source. Cf. également T. M. FRANCK, *Word Made Law: The Decision of the ICJ in the Nuclear Test Cases*, «American Journal of International Law», 1975 (vol. 69), n° 3, pp. 612 - 620.

⁴⁸ Il arrive parfois que les tribunaux nationaux se réfèrent aux résolutions

internationaux s'avère donc non seulement possible (comme nous venons de le démontrer), mais également utile, car cette opération facilite l'implantation des résolutions dans l'ordre juridique national et peut influencer positivement sur leur exécution.

Deux conclusions de caractère général s'imposent avant de terminer notre analyse. En premier lieu, selon la présomption en vigueur en droit international, les engagements dont la nature juridique n'est pas tout à fait claire ne lient pas. On doit donc admettre que l'Etat n'est pas juridiquement lié jusqu'à ce qu'une preuve indubitable de l'existence d'une obligation juridique ne soit fournie⁴⁹. En deuxième lieu, il faut mettre en relief la grande importance du principe de la bonne foi dans les relations interétatiques et notamment devant de nombreuses incertitudes en matière de rapports conventionnels. La liberté de forme dont jouissent de plus en plus largement les Etats dans l'établissement de leurs droits et leurs obligations peut bien faciliter le développement de la coopération internationale à condition toutefois que les volontés extériorisées dans la sphère du droit international conduisent à une exécution scrupuleuse des obligations contractées. Les organes étatiques responsables de la direction des relations conventionnelles doivent être conscients qu'en agissant conformément à la bonne foi les Etats non seulement contribuent au respect du droit, mais ils le font également dans leur propre intérêt ne serait-ce que parce qu'ils affermissent le droit international qui protège leurs propres droits. En trahissant la bonne foi, les Etats risquent plus qu'ils ne tentent de gagner⁵⁰.

d'organisations internationales n'ayant pas de force obligatoire, cf. K. SKUBISZEWSKI, *Recommendations of the United Nations and Municipal Courts*, «British Yearbook of International Law», 1972 - 73, pp. 353 - 364.

⁴⁹ La Cour Permanente de Justice Internationale a constaté dans son arrêt relatif à la compétence territoriale de la Commission internationale de l'Oder que, si l'intention des parties n'est pas claire malgré son analyse, il faut admettre l'interprétation la plus favorable à la liberté des parties, CPIJ, Série A, n° 23, p. 26.

⁵⁰ Cf. M. LACHS, *Some Thoughts on the Role of Good Faith in International Law*, dans: *Declarations on Principles, Liber Amicorum V. A. Röling*, Leyden 1977, p. 50.

The Responsibility of States in Armed Conflicts

by REMIGIUSZ BIERZANEK

1. The Responsibility of States for Actions of Their Own Armed Forces

The international responsibility of States is a correlate of the obligations of states to respect the rules of International Law. Since *ius in bello* developed very slowly in a customary way and the rules of international law restricting *ius ad bellum* could be accepted by states only during the last few decades, therefore the responsibility of states for the failure to comply with the obligations in this respect is a new¹ and rather controversial problem.

The principle, according to which states engaged in an armed conflict are responsible for any breach of the law of war was accepted during the Hague Conference of 1907 on the codification of the law of war on the land and was embodied in Article 3 of the IV Hague Convention. The Article introduced something new into international law: there is nothing similar in the Brussels Declaration of 1874 and in the Convention concerning the rules and customs of war on the land of 1899.

Article 3 of the IV Hague Convention of 1907 states:

"A belligerent party, which violates the provisions of the said Regulations, shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces".

Other provisions of the Hague Convention of 1907 define the respon-

¹ As pointed out by A. V. Freeman, prior to the adoption of the Regulations annexed to the Hague Convention, "...the liability of a State for wrongful acts by soldiers was restricted within narrowly defined limits; in earlier times, of course, there was no responsibility at all... Cicero candidly observed that it was not against nature to despoil somebody whom you had the right to kill (*neque est contra naturam spoliare eum, si possis, quem hominem est necare*), and in fact, support for the ancient usage of plundering and pillaging an enemy may be found in the Book of Numbers in the Bible". (*Responsibility of States for Unlawful Acts of Their Armed Forces*, RCADI, vol. 88, p. 325).

sibility of states for the compliance with the rules of international law in times of war in a less definitive language. Thus, Article 5 of the V Hague Convention concerning the rights and obligations of powers and neutral persons in times of war on the land stipulates that:

"A neutral State shall not tolerate any of the acts in violation of neutrality. It shall not be under obligation to punish acts in violation of neutrality unless they have been committed on its own territory".

According to Article 25 of the XIII Hague Convention concerning rights and obligations of neutral powers in times of war on the sea,

"A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above Articles occurring in its ports or roadsteads or in its waters".

Article 3 of the IV Hague Convention is of considerable importance in the development of international law, since it lays the foundations of the legal responsibility of states for damages caused as a result of the violation of the rules of the law of war. This is reflected in the recognition of the principle that illegal acts committed in time of war result in an obligation to pay compensation by the state which is responsible for these acts. And although, even earlier arbitration courts ruled in some cases in conformity with the principle embodied in Article 3, it was the first time that states accepted formally its content in an international treaty.

It was argued that Article 3 of the IV Hague Convention provided the legal basis for the claims for compensation for damages caused in connection with the violation of the provisions of the Hague Regulations made against Germany at the Paris Peace Conference of 1919.² In past centuries it was also the practice that a victorious state imposed on the defeated state the obligation to make certain payments in the peace treaty, however such decisions were based on political and not legal considerations (A case in point is the obligation imposed on France to make considerable payments to Prussia as a result of the lost war of 1870).

On the one hand, Article 3 makes states liable to pay compensation for damages caused by the violation of the Hague Regulations, and on the other hand makes them responsible for acts committed by their armed forces. It is argued that the motive inclining states to accept Article 3 was, first, the desire to strengthen discipline in the armed forces as regards the respect of the rules of the law of war, and only second the intention to render justice to the victims of war by pay-

² *Ibid.*, p. 333.

ments of compensation by the warring state which is responsible for the wrongful acts.³

The provision of Article 3 was the subject of conflicting interpretations. The question was raised as to whether the principle contained in that Article concerns only — according to its content — the regulations which constitute an annex to the IV Hague Convention, or covers also other provisions of the law of war. Most scholars favour a broader interpretation. Thus, E. Castren considers that Article 3 “contains a general principle, and is therefore applicable to breaches of other regulating provisions and to damage for neutrals”, although the Article provides for the payment of compensation for damages caused by members of the armed forces violating the Hague Regulations.⁴ Oppenheim concedes that a literal interpretation leads to the conclusion that Article 3 covers only violations of the Hague Regulations, but adds that “there is no reason to doubt that the principle of Article 3 must find application to any rule of the law of war by violation of which subjects of the enemy, or of neutral States suffer damage”.⁵ None the less, some scholars emphasize rightly that the opinion according to which the provision of the Hague Convention concerning explicitly violations of that Convention do cover all other violations of the law of war not dealt with by the Convention “would be repugnant to standard principles applicable to the construction and effect of treaties”.⁶ It must therefore be considered that Article 3 concerns, in accordance with its wording, the provisions of the Hague Regulations, which does not mean that one could conclude, by reasoning *a contrario*, that states are not responsible for violations of other provisions of the law of war.

Such a view finds its confirmation in the preparatory work of the II Hague Conference. The representative of Switzerland when discussing the draft of Article 3 submitted by the German delegation stated that to give the Regulations an international sanction which they have lacked assuredly heretofore does involve the least infringement of the eventual rights of persons who might be injured by other acts than those forbidden in these Regulations: in this regard, a simple note in the minutes can suffice to prevent any doubt of misunderstanding. This view was

³ *Ibid.*, pp. 332, 333. The author observes also that during the last World Wars the emphasis shifted from a collective pecuniary responsibility to individual responsibility for war crimes, i.e. to penal sanction; but in 1907 the present day concept of war crimes was not even within the visible horizon.

⁴ E. CASTREN, *The Present Law of War and Neutrality*, Helsinki 1954, p. 490.

⁵ L. OPPENHEIM, *International Law. A Treatise*, ed. by H. Lauterpacht, 8 ed., vol. 2, London 1955, p. 593.

⁶ A. V. FREEMAN, *op. cit.*, p. 339.

fully shared by the German delegate.⁷ Furthermore, it must be added that the provisions of the Hague Regulations are considered at present as constituting rules of universal customary law, applicable to any international armed conflict, in spite of the fact that Article 2 of the IV Hague Convention restricts the scope of application of these Regulations to relations between the contracting powers and only if all belligerent states are parties to the Convention (the so-called *si omnes* clause). It seems that there are enough convincing reasons to treat the principle expressed in Article 3 of the IV Hague Convention as a principle of universal customary law.

Another controversy concerning the interpretation of Article 3 deals with a matter of great practical importance: the point at issue is whether a state bears responsibility for acts of persons belonging to its armed forces to an extent exceeding their competence, or for acts of persons who failed to fulfil their duties. Are the actions of such persons imputable to the state involving its responsibility, or are they rather to be considered as acts of private persons, in which case the responsibility of the state would be restricted only to cases in which the state organs being in duty to prevent or punish persons committing wrongful acts failed to take appropriate measures (for example a larceny committed by a soldier on an occupied territory). In other words, the question arises as to whether — to use the wording of the draft convention of the UN International Law Commission concerning the responsibility of states for actions of their organs as covering persons belonging to their armed forces — is it possible to apply the provision according to which the conduct of a state organ “is not considered to be an act of the State if, by its very nature, it was wholly foreign to the specific function of the organ or if, even from other aspects, the organ’s lack of competence was manifest” (Article 10). Should the answer be positive, then the actions of the members of the armed forces would have to be considered as actions of private persons and therefore the provision would have to be applied according to which the omission on the part of the organs could be attributed to the state “where the latter ought to have acted to prevent or punish the conduct of the individual or group of individuals and failed to do so.” (Article 11).

Some American jurists are inclined to restrict the scope of application of Article 3 to only Articles 46 and 47 of the Regulations (obligation to respect private property, prohibition of looting), by expressing doubts as to whether the Article involves the responsibility of states

⁷ See *Proceedings of the Hague Peace Conference*, vol. 3, The Hague 1907, p. 141.

for willful and unauthorized acts by soldiers be low officer rank, for which heretofore according to generally followed practice no state responsibility was invoked⁸, or by adopting the interpretation according to which the obligation to pay indemnities exists whenever the authorities concerned neglected to take appropriate measures to prevent or punish.⁹

These views have been rejected by the overwhelming majority of jurists. It is being argued, quite rightly, that—because of such limited result—there would be no need for the clause on responsibility of 1907, which is obviously only a repetition of the rule in force in times of peace, and that prior to 1907 the arbitration tribunals had less difficulty in establishing the responsibility of states for unlawful acts of soldiers than for the acts of other officials.¹⁰ It is being pointed out that the principle expressed in Article 3 is a principle of absolute responsibility,¹¹ and that the state is responsible for the acts of soldiers irrespective of the fact whether the officer had the possibility to enforce discipline or whether he was aware of the prohibition to commit such acts.¹²

Some authors consider that Article 3 is universally viewed as evidence that—at least in this matter—there is an objective responsibility which must be borne by the state: the state is responsible for the wrongful actions of its soldiers, irrespective of the fact as to whether it can be charged with complicity or not.¹³

There can be no doubt, that the responsibility of the state for actions of persons belonging to its armed forces is of an absolute nature and is not restricted to cases in which the state organs neglected their duties in preventing or punishing those members of the armed forces who acted in a way exceeding their duties as soldiers. The specific regulation of the responsibility of states as regards persons belonging to their armed forces is justified by the organization of the army, which

⁸ E. M. BORCHARD, *The Diplomatic Protection of Citizens Abroad*, New York 1915, p. 248.

⁹ E. FEILCHENFELD, *The International Economic Law of Belligerent Occupation*, Washington 1942.

¹⁰ A. V. FREEMAN, *op. cit.*, pp. 341, 342.

¹¹ G. SCHWARZENBERGER, *International Law*, vol. 1, London 1945, p. 275.

¹² C. C. HYDE, *International Law*, 2 ed., vol. 2, New York 1945, p. 966. It may be added that the Inter-American Maritime Neutrality Convention, signed in Havana in 1928, stipulates in Article XVII that a belligerent shall indemnify the damage caused by the violation of the Convention and shall likewise be responsible for the acts of persons who may belong to his armed forces.

G. COHN, *La théorie de la responsabilité internationale*, RCADI, vol. 68/1939, vol. 2, p. 275. See also D. ANZILOTTI, *Cours de droit international*, Paris 1929, p. 499.

¹³— Polish Yearbook of International XI

gives the commander much greater powers enabling him to prevent violations of international law, compared with other spheres of state activity. And that explains why the law of war has been long before now based on the following two principles:

1) that the law of war applies to the armed forces, i.e. to organizations founded on specific principles in the field of authority and discipline: as stated in the Additional Protocol I of 1977 to the Geneva Convention of 1949, "such armed forces shall be subject to an internal disciplinary system which, *inter alia* shall enforce compliance with the rules of international law applicable in armed conflicts" (Article 43). Thus, the law of armed conflicts accepts as *preasumptio iuris et de iure* that as regards persons belonging to the armed forces there is both an obligation and a full possibility to prevent violations of international law, and that therefore there can be no cases in which the actions of these persons could be considered as actions of private persons which the state was unable to prevent;

2) that the state bears responsibility for any violation of the law of war committed by its armed forces and by persons belonging to them.

The responsibility of the state for any actions by persons belonging to its armed forces was again restated in the Additional Protocol I of 1977 to the Geneva Convention of 1949. Article 91 of that Protocol stipulates that

"A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces".

The Additional Protocol I to the Geneva Conventions signed in 1977 broadened the application of the humanitarian law of armed conflicts, as well as the category of persons covered by the notion of "armed forces". According to Article 1 of the Protocol the provisions of the Protocol which supplements the Geneva Conventions of 1949 apply not only to situations defined in Article 2, common for the Geneva Conventions,¹⁴ but also to armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination. On the other hand, the definition of armed forces contained in Article 43 of

¹⁴ Article 2 states that the Geneva Conventions "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them", "shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".

the Protocol covers "all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates even if that Party is represented by a government or an authority not recognized by an adverse Party". A more detailed definition of persons forming part of the armed forces was given in Article 1 of the Hague Regulations which extended the binding force of the laws of war to cover not only the regular armies but also militia and volunteer corps, provided that they fulfil the conditions specified in that Article. Article 3 of these Regulations specified that the armed forces of the belligerent Parties may consist of combatants and non-combatants.

It must also be added that the Third Geneva Convention of 1949 included in the category of persons considered to belong to the armed forces also "members of other volunteer corps, including those of organized resistance movements belonging to a Party to the conflict and operating in or outside their own territory, even if that territory is occupied", provided that they fulfil the conditions set forth in Article 1 of the Hague Regulations concerning volunteer corps. The members of the above mentioned resistance movements enjoy — in accordance with the Geneva Conventions — the same rights to protection as those granted to wounded, sick and shipwrecked persons (Article 13 I Geneva Convention, Article 13 II Geneva Convention) and prisoners of war (Article 4 III Geneva Convention).

According to I Additional Protocol of 1977 the armed forces of a party participating in an armed conflict include "all organized armed forces, groups and units, which are under a command responsible to that Party for the conduct of its subordinates, even if that party is represented by a government or an authority not recognized by an adverse Party"; the armed forces must be subjected to a system of internal discipline ensuring the observation of the provisions of international law concerning armed conflicts. Members of the armed forces other than medical personnel or chaplains are combatants and have the right to be treated as prisoners of war if they fall into the power of an adverse party (Article 43 and 44 of the I Additional Protocol).

2. The Responsibility of States for the Actions of Armed Forces Other than Their Own

Article 3 of the IV Hague Convention regulates the problem of responsibility of states for actions by persons forming part of their armed forces; thus, it does not cover the responsibility of states for the actions

of persons not belonging to their armed forces. So far this problem has not been solved in international treaties, it must therefore be considered in the light of the rules of international law concerning the responsibility of states in general, and in the light of the draft conventions on the responsibility of states for the actions of their organs.

The question arises as to whether and to what extent does a state bear responsibility for the violation of international law committed on its territory by armed forces which are not its own. This may apply in the case of foreign armed forces operating on the territory of a state, in agreement with or on invitation of that state, or in the case of an armed uprising directed against a legal government.

As far as the first case is concerned, the prevailing view is that the acts committed by organs of a state on foreign territory cannot be attributed to the territorial state; hence the responsibility must be borne by the state whose organs violated the provisions of international law. The territorial state is responsible only when and to the extent that its own organs either participated in the violation of international law or failed in their duty to prevent such violation.¹⁵ This view found its expression in the draft proposals concerning the codification of international law regulating the responsibility of states. Thus, according to the draft proposal of the International Law Commission prepared by Garcia-Amador, the acts and omissions of a third state or of an international organization shall be imputable to the state, in whose territory they were committed only if the latter could have avoided the injurious act and did not exercise such diligence as was possible in the circumstances (Article 15).¹⁶ According to the draft proposal prepared by the Harvard Law School (Article XIV)

"A State is responsible if an injury to an alien results from an act committed within its territory, which is attributable to another State, only if it has failed to use due diligence to prevent such injury".¹⁷

The above mentioned principle concerning organs of a third state is

¹⁵ M. R. GARCIA-MORA is in favour of broadening the scope of state responsibility (see *International Responsibility for Hostile Acts of Private Persons Against Foreign States*, The Hague 1962, p. 35). He concludes that: "The State ought to be made liable for private actions which engage the peace and security of mankind. This conclusion is reached irrespective of the doctrine of implied governmental complicity [...] the necessity for adequate protection of foreign nations and interest in the security of international relations would seem to require that states be internationally liable if the values of world peace and order are to be attained".

¹⁶ YILC 1961, vol. 2, p. 48.

¹⁷ AJIL 1929, Supplement p. 196.

undoubtedly applicable also to the forces operating on the territory of a third state.

The complexity of the situations in which the actions of a foreign state operating on the invitation of or in agreement with the organs of another state are taking place, as well as the complexity of the situation arising when the activity of the organs of a foreign state is tolerated by the territorial state, prompted some jurists to put forward the opinion that in some cases it is possible to speak of indirect responsibility.¹⁸ The opinion met, however, with strong objections on the ground that the responsibility of the territorial state can originate only in the acts or omissions of its own organs or in their relation to the organs of the foreign state and not in the actions of the foreign state. A stand of this kind was taken by the Rapporteur of the International Law Commission Professor R. Ago, who accepted — against his own views held earlier — as well founded the opinion according to which “actions emanating from organs of other subjects of international law, acting as such in the territory of a particular state, are not attributable to that state under international law and do not involve its international responsibility; as in the case of acts of private individuals responsibility can be incurred by that state on such occasions only on account of the conduct of its own organs in respect of the action of foreign organs, and it is that conduct as such which would constitute the violation of an international obligation”.¹⁹

In actual practice, states invoked on many occasions the responsibility of the territorial state in connection with the activities on its territory of foreign armed forces both in times of war and in times of peace: the basis of claims were, however, more or less clearly defined conduct of the territorial state in relation to foreign armed forces committing on its territory illegal acts.²⁰

¹⁸ See F. KLEIN, *Die mittelbare Haftung im Völkerrecht*, Frankfurt/M. 1941, p. 265 *passim*; R. AGO, *La responsabilita indiretta nel diritto internatzionale*, “Archivio di Diritto Pubblico”, 1936, vol. 1, p. 12.

¹⁹ UN Doc. A/CN. 4/264, p. 129; comp. also R. QUADRI, *Diritto Internazionale Pubblico*, 2 ed., Palermo 1957, p. 432. The author claims, against the opinion held by some scholars, that in international law there is no so-called indirect responsibility, or responsibility for the actions of other persons. To some extent the theory of indirect responsibility is also criticized by A. VERDROSS-DROSSBERG (*Theorie der mittelbaren Staatshaftung*, ÖZöR, 1948, p. 389, who states that all attempts made so far at explaining all kinds of indirect responsibility of states on the basis of one single principle could not be considered as satisfactory.

²⁰ For example, February 6, 1956 the USSR government sent a note of protest to the government of the Federal Republic of Germany in connection with the launching by the US armed forces of balloons equipped with automatic cameras

In connection with the armed intervention in Korea under the auspices of the UN and under UN flag, international lawyers were confronted with the question as to whether the responsibility for illegal acts of soldiers belonging to the contingents placed at the disposal of the UN by particular member-states is to be borne by the states concerned or by the UN itself. There seems to be no doubt that, in principle, the UN is responsible for the illegal acts of its organs; this results from the opinion of the International Court of Justice, which stated that as far as reparation for damages suffered in the service of the UN, the UN is "[...] capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims [...] against a State to obtain reparation of the damage caused by the injury of an agent of the Organization the course of the performance of his duties."²¹ Nor can there be any doubt, that the armed forces serving under the UN flag — whatever the position one may adopt as regards the scope of obligations resulting from the law of war for such UN troops — are duty bound to respect the humanitarian law of war and, hence, must be held responsible for any breach of that law. As far as the Korean war is concerned it is being pointed out that because of certain facts the UN could not be held responsible for the wrongful acts of the intervention forces. Thus, it is being stressed that no Military Staff Committee to direct the whole operation, as provided for in the UN Charter, had been set up, that the military command was placed in the hands of the United States, that the relevant resolutions of the Security Council authorized the command to use, at will, either the UN flag or the flags of the states participating in the operation, that the resolutions of the Security Council did not exempt these states from responsibility for the actions undertaken within the framework of the UN operation. Doubts have also been expressed as to whether a decision by an UN organ can exonerate a state from responsibility for illegal acts committed by its armed forces.²²

The question arises, furthermore, as to whether a state is responsible for the actions of insurgent troops operating against the government of that state, or as to whether it can be held responsible for the behaviour of persons participating in riots and demonstrations, which the

and radio transmitters, which violated the air space of the USSR. The government of the FRG was accused of permitting its territory to be used for actions violating international law. In another note of February 4, 1956 sent to the US government the USSR government stated that it held the US government responsible for the launching of these balloons.

²¹ CIJ Recueil, 1949, p. 179.

²² A. V. FREEMAN, *op. cit.*, p. 356 *passim*.

governmental authorities cannot control. It is obvious that such acts cannot be considered as acts of state organs. Consequently, the responsibility of a state in connection with such acts can result only from failures and omissions of the state organs in the fulfilment of their duties concerning the protection of persons and property.

However, whenever the insurgent troops operating against the government are under the command of an organization which exercises effective power over a given territory in a manner similar to that of state organs, the insurgent organization becomes a subject of international law and bears international responsibility for the actions of its organs. It is being emphasized that the pursuit of claims arising from that responsibility is much more difficult than in the case of states or international organizations, because the insurgency movement "is essentially a provisional subject of international law. The duration of its existence coincides with the duration of the fight against the pre-existing State or its Government. At the conclusion of that fight it must, in an event, cease to exist as such. If it is defeated, its existence comes to an end and its organization is dissolved. If it wins, it can — as we have pointed out — either transfer its organizational structures to the pre-existing State or become a new State... Moreover, the extent and size of the insurrectional movement may vary with the vicissitudes of the civil war, and the territory over which it exercises authority may shrink or expand. All this creates uncertainty regarding the prospects of obtaining reparation from the movement, during the conflict, for an internationally wrongful act, especially as it may have no property which, when the need arises, could afford a means of compensation. We may add that, if the State which complains of injuries caused by wrongful acts of agents of an insurrectional movement does not recognize or intend to recognize the movement with which it maintains no relations, presenting a claim and making responsibility effective could entail further difficulties, either in fact or in law, since there is a risk that the presentation of a claim could imply recognition".²³

The difficulties of pursuing a claim against an insurgency organization while the armed struggle is still under way explain why states are very reluctant to take such action before the end of the insurgency. The then prevailing situation may be that, either the legal government suppressed the insurrection and the insurgency organization ceased to exist, or the insurgents defeated the government, took over power in the state or created a new state on part of the territory of the pre-existing state. In the first case there is practically no possibility of

²³ Report by R. Ago. UN Doc. A/CN. 4/264, p. 131.

obtaining compensation from the insurgency organization, and that is why states sometimes presented their claims to the legal government, which suppressed the insurrection, for damages caused by wrongful acts of the insurgency organization committed when the organization was still active; some jurists attempted to justify such claims by either asserting that, as a rule, a state bears responsibility for certain routine activities on its territory, or by invoking the principle of succession of obligations.²⁴ However, both practice and doctrine are quite rightly accepting the view that the state cannot be held responsible for acts of private persons or insurgency organizations which it could not control. This does not exclude the possibility that a state may, for various motives, agree to pay compensation *ex gratia* or may conclude an agreement with a third state providing for the payment of compensation to a specific category of foreign nationals who suffered damage as a result of wrongful acts committed by insurgents; however, in this case the responsibility of the state will rest not on the general principles of international law concerning the responsibility of states, but on an international agreement providing for an exception from these principles.

The draft proposal of the International Law Commission, in Article 12 of the Draft Convention considered the responsibility of states for acts of insurrectional movements directed against such states and possessing separate international personality on an equal footing with the responsibility for acts of a third state or international organization and stated that such acts are not to be considered as an act of State under international law.²⁵ This rule, however, is without prejudice to the attribution of the responsibility of the States for the acts of their organs against the insurgency movements or the responsibility of the insurrectional movements, whose organs committed wrongful acts.

The principle according to which a state cannot be held responsible for injuries suffered by foreign nationals as a result of acts committed by insurgents had found its confirmation in several international agreements and in the practice of mixed commissions and arbitration courts. It was applied in the 19th century by the US-Mexican mixed commission set up under the Convention of 1868, by the US-British mixed commission set up under the treaty of 1871 to deal with the wrongful acts of the United States committed during the War of Succession and also in the US-Spanish mixed commission established in 1871 and 1898 in connection with the illegal acts of the Cuban insur-

²⁴ *Ibid.*, p. 132.

²⁵ YILC, 1975, vol. 1, p. 42.

gents.²⁶ In the early years of the 20th century this principle found its expression in the decisions of the mixed commissions established in 1903 in order to consider the disputes between Venezuela and several other states. The arbitrators emphasized in their rulings that "revolutionists are not agents of government and a natural responsibility does not exist. Their acts are committed to destroy the government and no one should be held responsible for the acts of an enemy attempting his life [...] the ordinary rule is that a government, like an individual, is only to be held responsible for the acts of its agents or for acts the responsibility for which is expressly assumed by it".²⁷ A similar stand was taken by M. Huber in 1925 acting as an arbitrator in the dispute involving British property in Spanish Morocco²⁸ and by the US-Mexican mixed commission dealing with the disputes of 1926—1931.²⁹

The Preparatory Committee of the Codification Conference of 1930 asked the participating states to express their opinion on the following matters: "Damage done to the person or property of foreigners by persons engaged in insurrections or riots, or through mob violence. Is, in general, the State liable, or not liable, in such cases? Where negligence on the part of the Government or its officials can be established or where connivance on the part of the latter can be shown?" In their replies 22 governments stated that, in general, a state cannot be held responsible for damages caused by insurgents; among these 22 replies there were 19, referring to the second question, which stated that states can be held responsible only when they neglected to take precautionary steps or punitive action to which they were obligated.³⁰ On the basis of these replies the Committee formulated the following proposals for discussion. Basis for discussion n. 22: "A State is, in principle, not responsible for damage caused to the person or property of a foreigner by persons taking part in any insurrection or riot or by mob violence". Basis for discussion n. 22a: "Nevertheless, a State is responsible for damage caused to the person or property of a foreigner by persons taking part in an insurrection or riot or by mob violence if it failed to use such diligence as due in the circumstances in preventing the damage and punishing its authors."³¹

²⁶ J. R. MOORE, *International Arbitrations...*, vol. 3, pp. 2873—2982.

²⁷ The opinion of the super-arbitrator of the Italian-Venezuelan Mixed Commission, UN RIAA, vol. 10, p. 512.

²⁸ UN RIAA, vol. 2, p. 642.

²⁹ UN Doc. A/CN. 4/264, p. 138 ff.

³⁰ *League of Nations. Conference for the Codification of International Law. Bases of Discussion for the Conference...*, vol. 3, Geneva 1929, p. 108 ff.

³¹ *Ibid.*, p. 110.

The situation differs when the insurrection ends in victory. The attribution of the acts committed by the organs of the insurgency organization, which later took over the power in the state, or created a new state under the authority of that organization, seems fully justified and is supported by the opinion of jurists and by international practice. The continuity between the insurgency organization and the structure of the state speaks in its favour. In the case of creation of a new state we are dealing with the continuity between an embryonic state and a state definitely formed in its full shape. When the power in the state is taken over by the victorious insurgency organization the state itself is undergoing a fundamental change, because its former structure and state apparatus disintegrate. Hence, it would be difficult to consider the acts of the state organs committed before the victory of the insurrection as the acts of the state under the new government.

In both doctrine and jurisdiction there is a clear tendency to attribute to the state *a posteriori* the illegal acts committed by the organs of a victorious insurgency organization during the civil war. It is being argued that the victorious insurgency organization was, before taking over effective power in the state, a government *de facto* exercising authority on a part of the state territory. It is also argued sometimes, that the victory of the insurgency organization proves that it represented the true will of the nation. And although these arguments are rejected by some authors,³² even these authors are not questioning the principle itself.³³

³² B. Graefrath expresses objections against this provision of the draft of the International Law Commission arguing that from the legal and political points of view it is difficult to understand why, in the case of a victorious insurrection its organs should be held responsible under international law, while in the case of a defeated insurrection no such responsibility would exist. Furthermore, he points out that the codification of responsibility should not cover the regulation of the succession of states in a way which would imply a restriction of the sovereignty of a young state (B. GRAEFRATH, E. OESER, P. STEINIGER, *Völkerrechtliche Verantwortlichkeit der Staaten*, Berlin 1977, p. 117).

³³ In his report, Professor R. Ago stresses the weakness of the argument concerning the *de facto* government, because the insurgency organization which was defeated had been during the civil war a *de facto* government and in spite of that fact the actions of that organization are not imputed to the state. As far as the argument concerning the will of the nation is concerned, Professor Ago points out that international law is not very much concerned with the fact whether a government represented the genuine will of the nation or not. In conclusion, he states that essentially the problem consists not so much in finding a justification for the attribution to the state of the acts committed by the organs of the insurgency organization, before it took over power: what matters was

Some scholars are also examining the situation, in which the insurgency organization having failed to achieve total victory, the existing state structure did not collapse and by way of compromise the system was partially modified and the insurgents admitted to share power with the previous government. It is agreed that in such a case the actions of both the organs of the legal government and the organs of the insurgency organization must be considered as the actions of the state.

International jurisdiction is unanimous in imputing to the state the responsibility for the wrongful acts of the organs of the insurgency organization which took over power in the state. In the case of the Bolivar Railway Company submitted to the British-Venezuelan mixed commission set up by the Protocol of 1903 the super-arbitrator stated that the state was responsible for the obligations of the victorious revolution since its beginnings, because in theory the revolution represented *ab initio* the changing national will, which found its final expression in the ultimate victorious result.³⁴ A similar stand was adopted by the mixed commissions: US-Venezuelan (the Dix case and the Henry case) and French-Venezuelan (the French Company of Venezuelan Railroads case).³⁵

In the Pinson case the president of the French-Mexican commission set up under the Convention of 1924 observed that: "*si les dommages trouvent leur origine, par exemple, dans les réquisitions ou contributions forcées, réclamées... par les révolutionnaires avant leur triomphe final ou par des délits commis par les forces révolutionnaires, la responsabilité de l'Etat ne saurait, à mon avis, être niée*".³⁶

The Preparatory Committee of the Codification Conference of 1930, in its questionnaire sent to the governments, asked the following question: "Is, in general, the State liable... where a rebellion is successful and the insurgent party which did the damage is installed in power and becomes the Government?" Ten among the fifteen governments which replied to that question expressed their preference in favour of the thesis that in such a case the responsibility lies with the state; the replies of three governments were ambiguous, while two governments demonstrated only a slight inclination in favour of the majority view. On the basis of these replies the Committee drew up the following conclusion for discussion: "A State is responsible for damage caused by an insurrectional party which has been successful and has become the

whether such attribution took place in the real world of international relations (UN Doc. A/CN. 4/264/Add. 1, p. 6).

³⁴ UN RIAA, vol. 9, p. 453.

³⁵ *Ibid.*, p. 120, 133 and vol. 10, p. 352.

³⁶ UN RIAA, vol. 5, p. 353.

Government to the same degree as it is responsible for damage caused by acts of the government *de iure* or its officials".³⁷

Legal doctrine adopts — with some minor exceptions — a similar stand.³⁸ In the draft proposal of the International Law Commission we find the following formulation of the above principle:

"Article 13. Retroactive attribution to a State of the acts of the organs of a successful insurrectional movement.

"1. The conduct of an organ of an insurrectional movement whose structures have subsequently become the structures of a new State constituted in all or part of the territory formerly under the sovereignty of the pre-existing State is retroactively considered to be an act of the newly constituted State.

"2. The conduct of an organ of an insurrectional movement whose structures have subsequently been integrated, in whole or in part, with those of the pre-existing State, is retroactively considered to be an act of that State. However, such attribution does not preclude the parallel attribution to the same State of the conduct, at the aforementioned time, of organs of the government which was at that time considered to be legitimate."³⁹

This wording was unanimously adopted by the members of the International Law Commission.⁴⁰

3. The Concept of Grave Breaches of the Law of Armed Conflicts

In the 19th century the dominating view in the doctrine of international law was that there is one kind of state responsibility of breaches of international law, irrespective of the gravity and scope of such breaches. Objections against this classical view were raised even before World War II. The adoption of the principle prohibiting the resort to war as a means of settling international disputes led to the qualification of an aggressive war as an international crime. Such a qualification can be found in the draft treaty on mutual assistance prepared

³⁷ *League of Nations... Bases of Discussion...*, vol. 3, p. 117 ff, and YILC 1956, vol. 2, p. 224.

³⁸ For a broader discussion of the doctrinal position — see R. AGO, UN Doc. A/CN.4/264/Add. 1, p. 10 ff.

³⁹ Comp. YILC 1975, vol. 1, p. 62.

⁴⁰ *Ibid.*, p. 71. In the course of the discussion prof. M. Ushakov pointed out that Article 13 deals not only with a strictly legal problem. It was a political and legal problem which could not be disregarded in determining the attribution of responsibility. If a *coup d'état* was organized by a part of the army with the support of a foreign State a question arises as to whether a successful insurrection could be viewed as legitimate in the same sense as when a national liberation movement succeeded. It was surely impossible not to make a distinction between such movements, since some of them were internationally wrong. Professor Ushakov was aware of the difficulties of the problem and suggested that it be thoroughly discussed by the Commission.

by the League of Nations in 1923 and in the Preamble to the Geneva Protocol of the League⁴¹ of 1924. The above mentioned documents failed, however, to deal with the problem of the responsibility of states for the waging of an aggressive war.

After World War II the distinction between grave breaches of international law, qualified as international crimes and other less far-reaching violations of international law found ever wider acceptance first in doctrine and later also in international treaties.⁴²

In this connection the contribution of the science of the socialist states was of particular importance. The distinction mentioned above can be found already in the work of D. B. Lewin, who distinguishes breaches of international law which he qualifies as crimes (*priestupleniya*) and simple violations (*narusheniya*).⁴³ USSR scholars emphasize that "in order to qualify an act as an international crime it is not enough to point to a violation of the law: for, it is also necessary to a) indicate the particularly grave dangers i.e. the consequences or possible consequences of such an act for one or more states, b) to prove that this is a particularly dangerous breach of the law, which should be provided for in international conventional or customary law." As an example of such a dangerous breach of the law one could cite the refusal to respect the provisions of a treaty on nuclear disarmament, if such a treaty had been concluded.⁴⁴ Another kind of distinction between breaches of international law involving a different degree of responsibility of states is proposed by scholars from the German Democratic Republic. They distinguish three kinds of breaches of particular importance and legal effects namely: military aggression, permanent threat to the peace by the maintenance by violent means of racist or colonialist

⁴¹ See the unanimously adopted resolution of September 24, 1927. LNOJ, Special Supplement, No. 53, p. 22.

⁴² See the Preamble to the Convention on Genocide of 1949.

⁴³ *Problema otvetstvennosti v nauke mezhdunarodnogo prava*, "Izvestiya AN SSSR", 1946, No. 2.

⁴⁴ A broader presentation of the views of USSR scholars on this matter is contained in P. M. KURIS, *Mezhdunarodnye pravonarusheniya i otvetstvennost' gosudarstv*, Vilnius 1973, p. 131 ff. The author defines international crimes as particularly dangerous breaches of the law representing an attempt on the fundamental, universally recognized principles of international law and therefore affecting the interests of all states, which have the right to apply individually or through international organizations sanctions provided for in international law against a state committing an international crime. See also L. N. GALENSKAJA, G. PETROVSKI, *Otvetstvennost' fizičeskih, lic za soveršenie mezhdunarodnykh prestuplenij*, "Sovetskij Ežegodnik Mezhdunarodnogo Prava", 1971, p. 118.

regimes, violation of the sovereignty of another state in contradiction with the fundamental principles of international law.⁴⁵

In the field of the law of armed conflicts the distinction between grave and other breaches of international law found its expression in the provisions of the Geneva Conventions of 1949 concerning the protection of the victims of war. These Conventions deal separately with grave breaches. They provide that:

"The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed, any of the grave breaches of the present Convention (Article 49 I Geneva Convention, Article 50 II Geneva Convention, Article 129 III Geneva Convention, Article 146 IV Geneva Convention).

Article 147 of the IV Geneva Convention states that:

"Grave breaches shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

Article 50 of the I Geneva Convention, Article 51 of the II Geneva Convention and Article 130 of the III Geneva Convention qualify some of the above mentioned acts as grave breaches.

Furthermore the contracting states accepted the obligation "to search for persons alleged to have committed such grave breaches" and undertook "to bring those persons regardless of their nationality, before their own courts" (Article 49 of the I Geneva Convention, Article 50 of the II Geneva Convention, Article 129 of the III Geneva Convention and Article 146 of the IV Geneva Convention). Article 51 of the I Geneva Convention provides furthermore that

"No High Contracting Party shall be allowed to absolve itself or any other Party of any liability in respect of grave breaches" (see also Article 52 of the II Geneva Convention, Article 131 of the III Geneva Convention and Article 148 of the IV Geneva Convention).⁴⁶

⁴⁵ B. GRAEFRAETH, E. OESER, P. A. STEINIGER, *op. cit.*, p. 232 ff.

⁴⁶ This provision cannot be interpreted as meaning that a state can exonerate itself from responsibility for damages on the ground that the offenders had been punished. This was confirmed in the report of the Relevant Commission of the Diplomatic Conference. See M. GREENSPAN, *The Modern Law of Land Warfare*, Berkeley 1959, p. 592.

On the other hand, as regards other violations of international law the contracting states undertook only to "take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article" (Article 49 of the I Geneva Convention, Article 50 of the II Geneva Convention, Article 129 of the III Geneva Convention and Article 146 of the IV Geneva Convention).

In the Additional Protocol I of 1977 to the Geneva Conventions of 1949 the concept of grave breach was further broadened and specified. Article 11 of Protocol I declares that:

"The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned or otherwise deprived of liberty [...] shall not be endangered by any unjustified act or omission. Accordingly it is prohibited to subject such persons, to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty. It is, in particular, prohibited to carry out on such persons physical mutilations, medical or scientific experiments, removal of tissues or organs for transplantations [...] any wilful act or omission which seriously endangers the physical or mental health or integrity [...] shall be a grave breach of the Protocol".

Furthermore, Article 85 of the Protocol contains a series of other prohibitions, the violation of which is qualified as a "grave breach". These prohibitions include:

"[...] making the civilian population or individual civilians the object of attack, launching an indiscriminate attack affecting the civilian population or launching an attack against works or installations containing dangerous forces (dams, dykes, nuclear electrical generating stations) in the knowledge that such an attack will cause excessive loss of life, injury to civilians or damage to civilian objects, making non-defended localities and demilitarized zones the object of attack, making a person the object of attack in the knowledge that he is *hors de combat* the perfidious use of the distinctive emblem of the Red Cross or other protective signs, deportation or transfer of the civilian population, unjustified delay in the repatriation of prisoners of war, practices of apartheid and other inhuman and degrading practices based on racial discrimination, making historical monuments, works of art or places of worship the object of attack, depriving a person protected by the Convention and the Additional Protocol of the rights of fair and regular trial".

In the same Article 85 it was stated that grave breaches of the Geneva Conventions and of the Additional Protocol I "shall be regarded as war crimes".

4. The Problem of Penal Responsibility of States

In the period between the two World Wars and also in the years immediately following World War II some scholars advanced the view that states ought to bear penal responsibility for grave breaches of international law, in particular for the crime of aggression, for crimes against humanity as well as for war crimes *sensu stricto* involving serious violations of the provisions of the law of armed conflicts.⁴⁷ They called, in the interest of maintaining international peace and ensuring the respect of the fundamental principles of the humanitarian law of armed conflicts for the conclusion of appropriate international treaties and for the creation of legal foundations permitting the indictment before international courts and the sentencing of states for grave breaches of international law qualified as international crimes. These views found, among other things, their expression in proposals for the setting up of international penal courts.⁴⁸ The gravity of war crimes perpetrated during World War I and World War II gave additional weight to these arguments which were supported by a number of international jurists.⁴⁹ However, the idea of penal responsibility of states for grave breaches of international law failed to gain the favour of governments.⁵⁰ And

⁴⁷ In this connection one may mention the Romanian Jurist V. PELLA (*La criminalité collective des Etats et le droit pénal d'avenir*, Bruxelles 1925; *La guerre-crime et les criminels de guerre*, Paris-Genève 1946) and the French jurist H. DONNEDIEU de VABRES (*Les principes modernes du droit pénal international*, Paris 1928; *Traité de droit criminel et de législation pénale comparée*, Paris 1947).

⁴⁸ P. M. CARJEU, *Projet d'une juridiction pénale internationale*, Paris 1953, pp. 47, 56, 68 and fol.

⁴⁹ In Polish science of international law these views were supported by Prof. S. E. RAPPAPORT (see his book *Naród-Zbrodniarz* [the Nation-Criminal] Łódź 1946), M. Muszkat and J. Sawicki. M. Muszkat and J. Sawicki argued that when rejecting the German claims concerning the return to Germany of the territories east of the Odra and Nysa one should invoke the new ideas in international law concerning the penal consequences resulting from the perpetration of an international crime. "Nazi Germany had become a criminal state [...]. Germany must be subjected to sanctions provided for in law and applied to those who are responsible for specific crimes [...]. Measures must be applied against Germany which will ensure that it will not be able to start another war" (M. MUSZKAT, J. SAWICKI, *Les revendications allemandes sur les territoires polonais occidentaux au point de vue du Droit Penal International*, RDSDP, 1947, No. 1, p. 6, 13).

⁵⁰ P. M. KURIS, *op. cit.*, p. 126 points out that between the concepts of "international crime of a state" and "crime under penal law" the concurrence is only of a terminological nature, because in fact the two phenomena are different. According to B. D. LEVIN (*Otvetstvennost' gosudarstv v sovremennom mezhdunarodnom prave* Moskva 1966, p. 62) the most characteristic features distinguishing

although in internal law there is penal responsibility of legal persons (for example commercial companies or cooperatives sentenced to pay fines); although in international organizations member-states can be penalized by having their membership rights suspended or by being expelled from the organization, practical considerations seemed to have prevailed as regards penal responsibility of states, with the resulting effect that the principal emphasis was placed on the prosecution and punishment of persons who had committed war crimes.⁵¹ This was the attitude adopted by the victorious powers in World Wars I and II. No states, but persons were held responsible, even though these persons acted as heads of state or other principal state organs.

The same attitude was adopted by the UN legislators. In the draft code dealing with crimes against the peace and security of mankind adopted in 1950 by the International Law Commission the authors specified the crimes under international law for which the persons responsible must be punished (Article 1). Commenting on Article 1 the International Law Commission stated that this is based on the principle of individual responsibility for crimes in accordance with international law, which was recognized by the UN Charter and by the Charter of the International Military Tribunal. In the elaboration of the Nuremberg Principles by the International Law Commission it was stated that any person committing an act which constitutes a crime under international law is responsible for that act and liable to punishment.⁵² Similarly, in the draft statutes of the International Penal Tribunal adopted by the Committee on Questions of International Penal Jurisdiction, set up by the UN General Assembly in 1950 (Resolution 489/V) we find a provision whereby the Tribunal restricted its compe-

the responsibility of states under international law from civil and penal responsibility derive from the fact that the international responsibility of states is a collective responsibility, and therefore essentially a political one.

⁵¹ Many scholars are of the opinion that the concept of penal responsibility of states would be inconsistent with the idea of state sovereignty and state immunity. They point out that in international practice such terms as "sentence" "penal measures" are not being used when states are concerned. Thus, during the discussion on the question of the responsibility for the assassination of count Bernadotte several delegates to the VI Committee of the General Assembly objected against the use of the term "*dommages-interests punitifs*", so that the Secretary General did not ask for that kind of reparation. It is also being pointed out in legal doctrine that a fundamental difference exists between the responsibility of a state and the responsibility of an individual, that penal sanctions against a state would cover the sphere of politics, and that this excludes sentencing to punishment. See C. T. EUSTATHIADES, *Les sujets du droit international et la responsabilité internationale*, RCADI, vol. 81/1953, p. 438.

⁵² UN. Doc. A/CN. 4/48, 30 VII 1951, p. 34.

tence to try only physical persons, including persons who acted as heads of state or members of government (Article 25).⁵³

In the course of its deliberations the Committee discussed also the question as to whether the proposed Tribunal should be competent to try states. The overwhelming majority of the Committee members were against such a solution. It has been argued that, apart from the question whether the provisions of international penal law admit the penal responsibility of states one must take into consideration the fact that the responsibility of states for acts qualified as international crimes is essentially of a political nature and that therefore it would not be proper to extend the competence of the Tribunal to cover that sphere. The majority of the Committee felt that for the time being it was most important to reassert and consolidate the principle that individuals can be held responsible internationally for perpetrated crimes. As regards other legal persons it was emphasized that, although penal responsibility of private associations exists in some systems of penal law, such responsibility implies punishment by fines or confiscation; on other systems of criminal law legal persons bear no penal responsibility. In these circumstances the introduction of penal responsibility of that kind into the system of international law would have given rise to great controversy. The principle that the Tribunal be competent to try only physical persons was adopted by 11 votes, with none against and three abstentions.⁵⁴

In the course of its subsequent work the Committee decided to omit in Article 25 the word "only", while maintaining its restriction of the competence of the Tribunal to physical persons. The proposal by the delegate of Australia to extend the powers of the Tribunal to cover legal persons was rejected by 11 votes with 4 abstentions.⁵⁵

One may add that the International Military Tribunal explaining the motives of the Nuremberg Judgement stated that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."⁵⁶

⁵³ *Report of the Committee on International Criminal Jurisdiction*, UN Doc. A/2136, p. 23.

⁵⁴ *Ibid.*, pp. 10, 11.

⁵⁵ *Report of the Committee on International Criminal Jurisdiction*, UN Doc. A/2645, pp. 13, 24.

⁵⁶ *Trial Against the Major War Criminals*, vol. 1, Nuremberg 1947, p. 223. A similar opinion was expressed by the US prosecutor Jackson who stated that "the idea that a State, any more than a corporation commits crimes, is a fiction. Crimes always are committed only by persons" (See *ibid.*, vol. 2, p. 150). On the

However, it can hardly be denied that the concept of state responsibility for breaches of international law contains some penal elements. International law makes states liable to compensation for wrongful acts resulting in damages; it authorizes the organs of international organizations to expel a member-state failing to fulfil its obligations from the organization. In some international organizations a procedure is being applied leading to the censure of a member-state which does not respect certain rules of international law; such censure is qualified by legal doctrine as a "moral punishment".

It must also be recalled that a series of international treaties and other intergovernmental documents qualify specific acts by states as international crimes (for example, aggression, genocide). Some international acts go even further, defining the scope of compensation which must be made by a state violating international law. Thus, for example, the Geneva Protocol of 1924 concerning peaceful settlement of international conflicts stated in Article 15 that the entire cost of military operations on the land, sea or in the air undertaken in order to repel an aggression, in conformity with the provisions of the Protocol, as well as the compensation of all damages incurred by civil or military persons and all property damages resulting from the military operation on both sides will be made by the aggressor to the extreme limit of his capacity, with the sole proviso that in no circumstance does the application of the sanctions provided for in the Protocol justify an attempt on the territorial integrity and political independence of the aggressor state.

In the Versailles Treaty it was stated that Germany and its allies bear responsibility for the losses and damages incurred by the Allied powers and their nationals as a result of the aggression by Germany and its allies (Article 231).⁵⁷ Similarly state responsibility for waging

other hand, the British prosecutor Sir Hartley Shawcross claimed that "there is not anything startlingly new in the adoption of the principle that the State as such is responsible for its criminal acts [...] history, very recent history, does not warrant the view that a State cannot be a criminal. There was indeed a time when international lawyers used to maintain that the liability of the State, because of its sovereignty, was limited to a contractual responsibility. International tribunals have not accepted that view [...] and they have gone further, they have held that a State may be bound to pay what are in effect penal damages" (*ibid.*, vol. 3, p. 104).

⁵⁷ FRG jurists attempt to weaken this statement of guilt of Germany; for instance DAHM (*ibid.*, vol. 3, p. 269) emphasizes that the provision of Article 231 was included in Chapter VIII of the Treaty of Versailles concerning reparations and not in Chapter VII dealing with penal sanctions. He argues also that this provision falsifies history.

an aggressive war was declared in the Peace Treaties concluded with the Axis satellites in 1947. The Preamble to the Peace Treaty with Italy states that Italy allied itself with Germany and Japan and became party to an aggressive war and must therefore bear part of the responsibility for that war. However, the establishment of guilt does not imply the acceptance of penal responsibility in international relations.

It can therefore be concluded that the concept of penal responsibility of states has no foundation in positive law and — with the exception of the opinion of some scholars — no support in the doctrine of international law.

The Premises of International Responsibility of Inter-Governmental Organizations

by EWA BUTKIEWICZ

1. Introduction

The establishment of international organizations and the place which they occupy within the international community raised a series of problems concerning the rights of these organizations under international law. The steadily growing participation of international organizations in international relations calls for a closer scrutiny of the question of the legality of the acts of these organizations, understood as the proper fulfilment of their statutory functions with due respect to the rights of other subjects of international intercourse. The institution which serves to evaluate, under universal international law, the actions of a given subject and the possible consequences of a violation of an obligation is international responsibility, whose source constitutes the internationally wrongful act.

The fundamental role of international responsibility ensuring the proper functioning of the international legal order can be played effectively only when the rules governing responsibility in that order apply to all subjects. A situation whereby the execution of obligations by some subjects is guaranteed by international responsibility, whereas the execution of obligations by other subjects enjoys no such guarantee, is totally unacceptable. Whenever a subject participating in international intercourse accepts an obligation arising from a rule of international law it is also submitted to the system of responsibility provided for in that law.

The actual participation of organizations in international intercourse is a fact of contemporary life. Their position of partnership *vis à vis* traditional subjects of that intercourse finds its confirmation in the legal aspect of their functioning. This warrants the thesis that international organizations are such participants of international intercourse,

to which the respective principles of international responsibility apply, whenever by their actions they violate obligations governed by international law. As addressees and to some extent also creators of norms of international public law resulting in the acceptance by them of numerous obligations, the organizations fulfil an objective premise for committing an internationally wrongful act. The subjective premisses for committing such an act derive from the fact, that these organizations dispose of an autonomous will exercised by their own system of organs. The analysis of the above mentioned premisses will enable us to verify the correctness of the general thesis.

2. The Subordination of Organizations to the Rules of International Law and International Responsibility

The subordination of international organizations to the rules of international law means that they are obligated to apply in specific spheres of their activity such solutions, which are in accord with the binding rules resulting from all sources of international public law. As distinct from states which are bound only by such legal rules which they accepted explicitly or tacitly, international organizations are bound by certain rules even without their acceptance. This applies to such rules which are not contained in the agreements of the international organizations (or in their decisions of a law making nature, provided that we recognize such decisions as a separate source of international law). Without entering into the consideration of the problem as to whether these are only norms of customary law or general rules of international law which are, formally, another source of law, it is obvious that organizations did not participate in the creation of the majority of these norms, hence they are not bound by them on the same basis as states are. On the other hand, if member-states endowed international organizations with the authority to act in a specific field governed by these norms and did not provide for the application of another system of law in the exercise of that authority, then the organization cannot be subjected to another legal regulation than that fixed by the respective norms of international law. This can be seen as one of the features characterizing international organizations as so-called secondary subjects of international law. In spite of the differences indicated above, it may be recognized that the discussed norms are binding on organizations as customary law, while it is of no importance whether this is also customary law in international relations or

whether this is conventional law arising from, for example, a multilateral convention.¹

From the way international organizations are established and from the manner in which they are granted authority by international treaties it may be concluded that their entire activity is governed by international law. However, not all tasks performed by international organizations require the entering into relationships on the level of international law. To such matters as the possession by the organization of a building to establish its headquarters, or the purchase of goods and services the international law of the state concerned applies. The relevant provisions are contained, for example, in the headquarter agreements or in the specific contracts; the capacity of the international organizations to enter into such relationships derives from the fact that they are being granted legal personality on the territory of the member-states.² Consequently, the responsibility of the organization for a behaviour violating the obligation deriving from a legal relationship, in which the organization appears as a subject of internal law, is regulated by relevant provisions of the legal system, under which the contract itself has been concluded.

On the other hand, if the international organizations establish legal relations with partners and use at that occasion rights characteristic of a subject of international law, then the international organizations are subjected to the norms of international public law. It seems that the decisive factor in this case is the content of the established rela-

¹ As an example, one may cite the law of war applied also in the military operations of the UN. The principles of that law are, to a large degree, codified in the Geneva Conventions, to which the UN is not a party. The UN does, however, consider itself bound by these provisions; this was confirmed in a memorandum on the possibility of international organizations acceding to the Geneva Conventions on the protection of the victims of war, published by the UN Secretariat June 15, 1972 (see "UN Juridical Yearbook", 1972, p. 153—154). Certain reservations to the practical application of the law of war by international organizations are voiced by K. SKUBISZEWSKI, *Prawo wojny i neutralności w świecie współczesnym* [The Law of War and Neutrality in the Contemporary World], "Ruch Prawniczy, Ekonomiczny i Socjologiczny", 1967, No. 2, p. 115—116.

² The legal personality of an organization in internal law is recognized also by non member-countries, even though they do not recognize its legal subjectivity under international law. I SEIDL-HOHENVELDERN, *The Legal Personality of International and Supranational Organizations*. "Revue Egyptienne de Droit International", 1965, vol. 21, p. 64. See also R. TUPIN, *Podmiotowość prawna organizacji międzynarodowych* [The Legal Personality of International Organizations], "Sprawy Międzynarodowe", 1978, No. 3, pp. 102—103. The problem of the proper law in the relations of organizations of a private law nature is considered by W. JENKS, *Proper Law of International Organizations*, London 1962.

tionship. When it concerns matters which in international relations are governed by international public law, then the change of the system of law ought not to be affected by the fact, that at least one of the subjects of the relationship is an international organization. What matters, is the fact that when setting up international organizations the member-states transfer to them certain rights which were previously held by themselves and whose exercise was subjected to international public law. The taking over of such rights by international organizations representing the member-states does not modify their legal character (they do not lose their "public" character), and that is why a change of the legal system i.e. of the international public law governing these relationships would not be warranted.

Furthermore, the actual position of international organizations in international intercourse calls for their "simulation" of states,³ in such fields as, for example, representation, or privileges and immunities. The creation for the needs of international organizations of a separate legal system would duplicate the existing one applying to similar international relations and would unnecessarily complicate the legal regulation of the relations entered into by international organizations with other subjects of international law. The refusal to extend the application of international (inter-state) law to cover the activity of international organizations would result in the emergence of a legal vacuum, thus — as rightly pointed out by de Visscher — jeopardizing minimum legal security.⁴

So far, we did exclude from the evaluation on the plane of international law such activity of international organizations in which they appear as legal persons of the internal legal systems. Now the follow-

³ According to D. P. O'Connell, in so far as the activity of an organization resembles the activity of a state, organizations are subjected to the identical responsibility confined within the one admissible system of international law. See D. P. O'CONNELL, *International Law*, vol. 2, London 1970, p. 960. Similar opinions are expressed by I. BROWNLIE: "If an organization has [...] functions which in the hands of states may create responsibility, then it is accordance with principle and common sense to impute responsibility to the organization". I. BROWNLIE, *Principles of Public International Law*, Oxford 1966, p. 525. P. Reuter is even inclined to consider that since organizations have the right to establish international relations, then the assumption of international responsibility by them constitutes a minimum of fundamental authority (together with the right to cooperate with other organizations) vested generally in organizations, unless the charters of these organizations stipulate otherwise. See, P. REUTER, *Droit International Public*, Paris 1976, p. 196.

⁴ P. de VISSCHER, *Les conditions d'application des lois de la guerre aux opérations militaires des Nations Unies, Rapport provisoire*, "Annuaire de l'Institut de Droit International", 1971, vol. 1, pp. 43—44.

ing question arises: does the remaining activity of the international organizations fall under international public law and do they therefore assume international responsibility for it? The answer can be found indirectly in the presentation offered above and boils down to the thesis that the rules of international law apply to such activities of international organizations in which they make use of rights assumed by a subject of international law. The identification of such activities is however made difficult because of the absence of an unequivocal, specific and universally recognized definition of a subject of international law. The list of rights whose possession by a given subject points at its subjectivity in international law is not and cannot be closed, since we assume that international law is constantly in the making. Furthermore, as stated by the International Court of Justice, the legal nature of subjects in a given legal system is not necessarily identical.⁵ It is therefore preferable to abandon the search for a reply to the question so put, by the reference to the subjectivity of the organization under international law.

In turn, the distinction of such actions of an organization which involve international responsibility on the ground of analogy with the situation of states would have to be based on the concept of "internal law" of the organization. This, however is a controversial concept because of the objective scope and legal character of the norms constituting "internal law". And that is why such a reasoning would not be conducive to an unequivocal solution of our problem. Also the analysis of actual practice, which is so far of a too fragmentary nature, provides no foundation upon which far reaching general conclusions could eventually be based.

Therefore, the only criterion which can be applied in order to judge whether a specific act of an international organizations is subjected to international law is the essence of such an act. This had been pointed out earlier; et present some additional broadening of its scope seems necessary. First, it must be emphasized that rules of international law govern such acts of international organizations which involve the application or exercise of rights assumed generally by a subject of international law, or to be more specific, of rights of states which they exercise in practice (for instance the right to conclude treaties). Furthermore, the rules of international law apply to the sphere of activity of international organizations which, although has no analogy with the activity of states, assumes a "public" nature in the sense that it is

⁵ *Reparation of Injuries Suffered in the Service of the United Nations, ICJ Reports, 1949, p. 178.*

essential to the proper functioning of the organization and affects directly the legally protected interests of member-states and other partners of the organization in its international dealings.

Considering that the international legal system constitutes an integral whole embracing, apart from "primary" rules regulating the substantive part of international intercourse, also rules guaranteeing their implementation, i.e. the principles of international responsibility, it is right and proper and in conformity with the aim of ensuring the security of international intercourse to include international organizations in the scope of these "secondary" rules.

3. The Principles of Attributing Wrongful Acts to International Organizations

The capacity to violate international obligations, or to act in a wrongful way is directly connected with the possession of a free will by the subject of international law. Each subject, in conformity with its own will and by the exercise of its own free will, fixes the objectives which it wants to achieve as well as the means conducive to their achievement. The exercise of the free will of the subjects can be in conformity with the law, or can violate the law, for the exercise of the free will can be reflected both in the creation and implementation of the rules of law as well as in behaviour constituting a violation of the law. The subjects choose themselves, within objectively determined boundaries, their way of acting and that is why they can be charged with the responsibility for opting in favour or a specific line of action and for the consequences resulting therefrom.

In the case of states, their behaviour is determined by their sovereign will, which is lacking in the case of international organizations. This does not mean that international organizations are totally deprived of their own will or that they represent only the sum total of the will of their member-states. The will of an organization must rather be defined as the resultant of the wills of member-states. And although the former is of a secondary nature, since it derives from the agreement of states to form the organization, it does not affect the autonomy of the organization to act in the spheres agreed upon by the founding states. The organizations are either fulfilling their statutory functions or not; they may use their statutory methods or apply other methods, including methods contradicting the rules of international law. The specific choice represents an act of implementing the autonomous will

(functional autonomy) of the organization, and therefore the organization must bear the consequences of its behaviour.

In order to bring the mechanism of international responsibility into action it is necessary to determine whether the breach of an obligation was the result of the subject's own act. For that purpose we apply the institution of attribution. As a premise of international responsibility attribution appeared in the relatively new theory of objective responsibility formulated in our century.⁶ The fundamental role of that premise lays in the demonstration as to whether the required link under international law of the wrongful behaviour and the subject exists. Such a link can only be established when a person (or group of persons) undertaking an action or failing to act remains in a specific relationship with the given subject of international law.

Among several links between physical persons and a subject of international law defined by the law, the decisive links for the recognition of the behaviour of these persons as an autonomous act of an organization are of a double kind. In the first place, the organization is being attributed responsibility for the behaviour of persons remaining with it in a functional relationship (the organs of the organization, the persons employed by it), as well as for the behaviour of persons (organs) placed at its disposal.⁷ The functional link of a person with an international organization means that a person or group of persons is part of the organizational structure and implements the policy of that organization. Whenever the execution of the will of the organization leads to the violation of the organization's international obligation, this remains within the scope of the organization's own act, which means that the person (or persons) involved acted in the name of the organization and not on their own behalf. Consequently, the behaviour of persons maintaining a functional relationship with the organization, in accordance with the rule set by international law, is attributed to the organization.⁸

The specific nature of the subjectivity of an international organi-

⁶ D. ANZILOTTI, *Cours de droit international*, Paris 1929, pp. 251—253. J. G. STARKE, *Imputability of International Delinquencies*, "Studies in International Law", London 1965. P. REUTER, *Principes de droit international public*, RCADI, vol. 103, 1961, pp. 590—605. E. J. ARECHAGA, *International Responsibility*, in: *Manual of Public International Law*, London 1968, p. 534—535. P. KURIS, *Meždu-narodne pravonarūšenja i odgovornost' gosudarstva*, Vilnius 1973, pp. 145—154.

⁷ These principles are binding also on states. Comp. Articles 4—15 of the draft Convention on the Responsibility of States.

⁸ M. SØRENSEN, *Principes de droit international public*, RCADI, vol. 101, pp. 226—227.

zation under international law requires, however, a more precise definition of that rule. For, unlike the situation existing in a state, persons representing the organs of an organization are, or have been, previously connected with another subject of international law (the state) by a specific relationship. This has a fundamental influence on the scope of the functional link between the organization and the persons constituting its organs. In this connection it is possible to speak of competing functional links, of the functional link with the organization *versus* the functional link with the state represented in the organization. The attribution to the organization of the effects of the behaviour of its organs must also take into consideration another factor. It must be determined what function (and in whose interest) the person involved is performing in each concrete case. If the person performs a function of the organization, this means that the organization's authority decided that the functional link with the organization must prevail, and in that case the behaviour of the person must be attributed to the organization. On the other hand, when the person acts in the interest of another subject, then the link with the organization assumes a minor importance or disappears completely. Consequently there is no ground for the attribution of the acts of that person to the organization.

Thus, it is the intensity of the functional links which determines the degree of dependence of the behaviour of physical persons on the organization's authority and the attribution of their acts to the organization. The differences in the degree of attribution result from the varying legal status of the persons representing the organs of the organization. Accepting the status as the criterion of division of the organs of the organization, one must distinguish, in the first place, between inter-state organs and international functionaries. These two categories appear in all organizations and affect decisively their functioning.

In actual practice it may sometimes happen that organizations dispose of organs "lent" from other subjects, for example, from member-states. The organization may charge them, on a temporary basis, with the execution of certain tasks within its own structure thus complementing the functioning of its own organs. In this way, the "lent" organs play the role of an integral part of the organization, although they are not linked to the organization by a permanent functional link. Should the organs placed at the disposal of the organization when acting in its name commit a wrongful act, this must be attributed to the organization. The indispensable condition for such an attribution is the effective and exclusive exercise of control over these organs by the organization. The mere delegation of functions and the issuing of instructions is not sufficient; the organization must watch over the legality of their actions

and assume responsibility for any wrongful acts which may be committed. (The same principle applies to states, in accordance with Article 9 of the draft Convention on the Responsibility of States.)

3.1. The Attribution of the Behaviour of Inter-State Organs

Inter-state (inter-governmental) organs are fundamental organs of international organizations. They are the decision making bodies on the most important matters affecting the actions of the organizations, they shape their activities, they control other organs, they decide on the membership, etc.⁹ In the structure of the organizations they occupy the highest place and are subjected only to the control of interparliamentary organs, if such organs exist in that structure.

The inter-state organs are composed of the member-states represented by their delegates. These are persons appointed and revoked by the member-states who delegate to them the power to represent their interests in the organization. To that purpose special instructions are being issued, to which the delegates must conform. The actions by delegates are taken in the name of the states they represent and to whom they are accountable. As representatives of sovereign states the delegates enjoy privileges and immunities granted by the organization and by the state where the headquarters of the organization have been set up.

During the discussion on a specific question within an inter-state organ, in the course of the decision making process, during the vote on a proposal, the functional link is that between the persons constituting the organ of the organization and the delegating states. The members sitting there are acting on behalf of the delegating states and defend their particular interests. This can even involve a violation of an international obligation contained, for example, in the statutes of the organization. However, since such a violation reflects the desires and aspirations of particular member-states and not of the organization as a whole it is not to it that such behaviour is to be attributed.

The will of the organization as a separate subject of international law comes into light only at the second stage of the work of the inter-state organ, when the decision was reached. And although the de-

⁹ Inter-state organs can perform the duties of plenary organs and administrative organs composed of a limited number of member-states. Since they are generally constituted with due regard for equitable representation of the various groupings in the organization, no difference should be made between the attribution to the organization of the acts of plenary organs and of the administrative organs. Z. M. KLEPACKI, *The Organs of International Organizations*, Warszawa — Alphen aan den Rijn 1978, p. 30—31.

cision is being taken by votes cast by representatives of other subjects of international law, the mere fact of them acting in common with the aim of achieving a common end testifies to the existence of an integral link between the organ and the organization. If the same problem had been considered by the same states outside the organization, it is highly likely that the decision arrived at would have been different from that taken by these states acting as members of an organization. For, the organization disposes of certain powers, which are not without influencing the solution of problems within the competence of the relevant organ.¹⁰ The manifestation of the element of power of the organization in the decision making process of inter-state organs operates against the treatment of such a decision as the sum total of the will of the member-states as well as against its attribution to the community of these states. While recognizing the decision of the organization as the resultant of the will of the member-states, we are justified in attributing it to the organization, for thanks to the organization it was possible to arrive at a formula satisfying the member-states, although not necessarily entirely convergent with their interests. The corporative character of an organization does not preclude the attribution to it of behaviour of inter-state organs.

It remains to be seen whether in the general pattern of attribution to organizations of the behaviour of inter-state organs the voting procedure which enables the member-states to manifest varying positions towards the problems under consideration and to adopt a separate stand towards a decision already taken, introduces some modification. International organizations take decisions unanimously or by a majority vote. In the case of unanimity there is no problem with the attribution of the decision to the organization. The opinion arrived at in the course of the discussion is recognized by all member-states as their own (as manifested by their vote) and is at the same time the opinion of the organization as a whole. The interests of particular member-states are identical with the common interest, as reflected in the formal act taken by the organization. The attitude of the organ adopting a decision is viewed as an act of the organization which is attributed to it. Should such a decision be affected by fault which may give rise to doubts as to its legality, then the responsibility for the violation of an international obligation lay squarely on the organization.

Consensus is a particular form of unanimity when reaching a de-

¹⁰ On the role of the organization and its organs in the decision-making process, see Z. M. KLEPACKI, *The Decision-Making Process in International Organizations*, "Polish Yearbook of International Law", vol. 8, 1976.

cision.¹¹ In spite of the absence of the external element of the manifestation of the will of the organization in the form of a vote, a decision arrived at by consensus has all the characteristics of an act of the organization. The delegates participating in the discussion are obviously giving preference to the common interest, implementing thereby the will of the organization. A decision expressed in that way can therefore be attributed only to the organization.

The problem of attribution is less clear when decisions are taken by majority votes. For, in that case these are supported only by part of the membership of the organization, while the other part is either uncommitted (as manifested by a vote of abstention) or against (as manifested by a "no" vote). The question arises as to whether a decision adopted by a majority can be attributed to the organization as a whole, without taking into consideration the views of the minority. For, it could be argued that it is only an act of the majority and therefore attributable only to those who voted in favour.

The adoption of the latter solution weakens the position of the international organization as an element of the international process and equates the *modus operandi* of the member-states in an inter-state organ with their *modus operandi* in international conference. This contradicts fundamentally the principles of inter-state cooperation as manifested in the establishment and functioning of international organizations. And that is why the attribution of the decision taken by a majority vote to only those states who voted in favour must be rejected.

There are several important arguments operating in favour of the adoption of the former solution. The statutes of an international organization provides, as a rule, that a group of delegates of member-states, duly constituted, has the status of an organ of the organization; on the other hand, an organization, like any other subject of law which is not a physical person, must act through its organs. The fact that there are differing views as expressed by a majority vote taken by the organ is irrelevant. This is a technical matter concerning the functioning of the organ and determined by the statutes; it has no bearing on the legal nature of the organ, according to which the acts of the organ are directly acts of the organization.

The argument that thereby the states belonging to the minority are being harmed to some extent seems unwarranted. By joining an inter-

¹¹ C. W. JENKS, *Unanimity, the Veto, Weighted Voting, Special and Simple Majorities and Consensus as Modes of Decision in International Organizations*, in: *Cambridge Essays in International Law*, London 1965, pp. 55—56. H. C. SCHERMERS, *International Institutional Law*, Leiden 1972, pp. 327—328.

national organization which adopts decisions by majority votes a member-state accepts the risk that a decision taken by an organ of the organization may not be consistent with its particular interests. It is to be assumed that by becoming a member of an international organization each state had accepted certain structural rules, considering that in the last resort this will prove to be profitable. The sole act of majority voting in an organ of an international organization is nothing but the execution of one of the obligations accepted unanimously by all member-states.¹² It can therefore be stated that the rule whereby the acts of inter-state organs must be attributed to the organization applies equally not only to all types of such organs (plenary and executive) but also to various procedures of decision making by these organs.

3.2. The Attribution of the Acts of International Functionaries

The structure of international organizations includes, together with inter-state organs, organs composed of persons defined as functionaries of the organization or international functionaries. The status of these persons is determined by the mere fact of the performance of the functions of the organization on a permanent or temporary basis (as for instance the work of experts employed by the organization). In a broad sense, an international functionary is a person charged with the performance of certain functions of the organization.¹³ The legal situation of the international functionary is therefore of a special nature. It is determined by two factors: independence from the state, of which he is a national, dependence on the international organizations which employs him. The independence from the state of persons employed by international organizations is guaranteed, among other things, by the recruitment procedures, by the restriction of the right to accept various kinds of benefits from the states, by the granting to the international functionaries of privileges and immunities, by the extension of functional protection by the organization to them.¹⁴ The dependence on the organization is expressed by the obligations assumed by the persons serving the organization. As a rule, these obligations cover the execution

¹² A. CAŁUS, *Charakter prawny Wspólnot Europejskich* [The Legal Nature of the European Communities], "Państwo i Prawo", 1962, No. 4, p. 643.

¹³ The definition of the international functionary by S. Basdevant is considered as classic. See, S. BASDEVANT, *Les fonctionnaires internationaux*, Paris 1931, p. 53. Comp. also the definition contained in the advisory opinion of the International Court of Justice, *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Reports, 1949, p. 174.

¹⁴ D. RUZIÉ, *Les fonctionnaires internationaux*, Paris 1970, pp. 48—49.

by them of functions which they perform on behalf of the organization (even with the exclusion of all forms of private professional activity) and compliance with regular disciplinary rules.¹⁵ The substantial functional links with the organization justify therefore the attribution to the organization of the behaviour of its functionaries.

The performance by international functionaries of certain functions is characteristic of the administration, management, settlement of disputes by such subjects of international law as international organizations. For the majority of these functions it is difficult to find an equivalent in the practice of states; this reduces or even eliminates the possibility of attribution to a state of the behaviour of persons. The peculiarity of the functions performed by international functionaries reinforces the argument in favour of the exclusive attribution to the organization of the acts of its functionaries.

Traditionally, the administrative organs composed of international functionaries, called secretariats or bureaus, were supposed to guarantee the proper organization of the work of the constitutional organs, by ensuring all necessary services. As time went on, the tasks of the administrative organs broadened considerably, together with the possibility of commission of wrongful acts. However, in actual practice such internationally wrongful acts are relatively rare.¹⁶

The functionary called secretary general or director general occupies in the structure of the organization a special position. He is the head of the administrative organ, but as a rule his functions exceed the boundaries set by mere administration. The administrative duties, such as procedure, coordination of the work of the various departments of the organization, duties in the sphere of information and reporting are supplemented by executive functions performed either together with other organs of the organization or autonomously.¹⁷ The importance of the post of secretary general¹⁸ calls for particular care in the choice

¹⁵ *Ibid.*, p. 20—22. Z. KLEPACKI, *The Organs...*, pp. 48—49.

¹⁶ A most recent example is the conflict which had arisen in connection with the refusal by the UN Secretariat to register the notification of the withdrawal by Senegal from two Geneva Conventions on the Law of the Sea; this was qualified by Senegal as a violation of the duties of a depositary of international treaties. For a broader discussion of the matter see P. TAVERNIER, *L'année des Nations Unies* (22 décembre 1971 — 19 décembre 1972), "Annuaire Français de Droit International", vol. 28, 1972.

¹⁷ For a broader discussion see D. W. BOWETT, *The Law of International Institutions*, London 1963, pp. 76—82; E. PIONTEK, *Rozwój kompetencji Sekretarza Generalnego ONZ* [*The Development of the Competence of the UN Secretary General*], "Sprawy Międzynarodowe", 1959, No. 11—12.

¹⁸ On the subject of the performance of these functions see K. WALDHEIM,

of person, and this is ensured by a special procedure of selection, different from that applying to the appointment of other functionaries. However, neither this procedure or the scope and importance of his function affect the legal status of the secretary general as a functionary of the organization.¹⁹ In this case also the same general rule applies, whereby the acts of persons performed on behalf of the organization are attributed to that organization. The attribution of the behaviour of the secretary general to the organization is all the more justified, since he represents the organization in its dealings with the outside world; his views and actions are, as a rule, associated with the organization, in the same way as the views and attitude of a head of state are associated with the state itself.

The application of the general rule, whereby the behaviours of the functionaries are attributed to the organization to the extent determined by the scope of their authority, does not resolve the difficulty connected with the exact delimitation of the boundary allowing for the attribution to the organization of the acts of the secretary general. The exact definition of his duties and forms of action, especially as far as executive functions in political organizations are concerned, is far from easy. The relevant provisions in the charters of the organizations are drafted in a very general manner, and the variety of situations with which the secretary general must cope add further complications. It must also be emphasized that in the case of functionaries of that level the opinion of their behaviour is determined not only by legal considerations but also by judgements of a political and moral nature.

Policy making organs composed of international functionaries are exceptional in the structure of international organizations. An exception is the Commission of the European Communities. Its powers are very broad indeed — it issues directives, adopts decisions, initiates and prepares most of the decisions of the Council of Ministers, issues so-called executive orders, controls the execution of the statutory provisions and of the adopted decisions. The wrongful acts committed by that organ and by the functionaries employed by it can be attributed only to the Community, in the same way as the behaviour of other functionaries. For, the persons whose activities are judged are employees of the organization and independent from the state of which they are the nationals. It is their duty to perform specific tasks in the interests of the organization as a whole, without being influenced by considerations of national interest. In the organizational structure they are, as an organ,

Les armes du Secrétaire Général sont la raison et la persuasion, "ONU. Chronique Mensuelle", 1977, No. 1, p. 94.

¹⁹ M. VIRALLY, *L'Organisation mondiale*, Paris 1972, p. 124.

subjected to the Parliament of the Communities and not to an inter-state organ. The legal status of the Commission reveals a certain degree of similarity of its situation with that of the secretary general in other organizations. In the Commission, the same as in the case of one-man leading organs, the scope and nature of the duties make it practically impossible to delineate exactly the boundaries of attribution to the organization of the acts of that organ. These difficulties cannot, however, change the basic principle according to which the behaviour of the functionaries representing the Commission of the European Communities arising from the execution of their normal duties is attributed to the organization.

In some international organizations there are organs dealing with the settlement of disputes arising in connection with the adoption and application of decisions taken by the organization and its member-states, or conflicts between persons employed by the organization and the organization and conflicts between member-states. The problem of attribution to the organization of the behaviour of the judges (mediators, arbitrators) is all the more complicated, when compared to other functionaries, since, on the one hand, these persons enjoy the status of a functionary, while on the other hand the nature of their function within the organization requires far reaching autonomy and restriction of the control exercised over them by the organization. In the performance of their duties the judges must be guided not by instructions received from the organization but by their sense of equity in the application of the law. They must remain impartial, impervious to the influence of states or the organization, their only duty is to administer justice. The specific requirements resulting from the nature of the functions performed by persons constituting organs entrusted with the settlement of disputes are not altered by the fact that these functions had been given to them by the organization and that in the light of the provisions of the organization they are its functionaries. Under certain justified circumstances the judges can be revoked and the organs themselves subjected to some kind of control (by another judicial organ, for example by the UN Administrative Tribunal, by the International Court of Justice or other appropriate organ of the organization). These considerations operate in favour of attributing to the organization the wrongful behaviour of functionaries constituting organs entrusted with the settlement of disputes in accordance with the general rule.

It does not seem however that the necessity of such attribution arises often in actual practice. The organs entrusted with the resolution of conflicts are seized in the first place (or almost exclusively) with

cases which are not connected with international obligations of the organization, such as for example labour conflicts, claims by physical or legal persons, etc. Consequently, the attitude of these organs is not likely to affect the international obligations of the organization; hence no question arises as to the attribution of international responsibility.

Still other difficulties arise in connection with the attribution of acts of international experts. For in this case we are confronted with a particularly high degree of competition between the functional link of the person concerned with the state and the functional link with the organization. We know from actual practice that experts, i.e. persons qualified by their background and professional experience to perform certain tasks or to take part in the work of auxiliary organs, appointed by the organization are, as a rule, linked professionally and permanently with the state. True enough, they are being freed temporarily from their normal duties, which enables them to render services to the organization, however their contacts with the state are much more intense than the contacts of other functionaries. They are also more open to influence by the state, hence they are not fully independent in the exercise of their duties on behalf of the organization.²⁰

In theory, neither the state nor the organization have the right to instruct them on professional matters, which must be left to their own discretion. The organization pays them for their services, grants them privileges and immunities and extends to them functional protection as long as they remain in the service of the organization. Since the legal status of experts performing their duties does not vary from the status of other international functionaries,²¹ while the functions are those of the organization's, the wrongful acts of experts must be attributed to the organization.²²

3.3. The Attribution of Acts by Other Organs of the Organization

In a number of organizations, particularly in Western Europe, it is possible to distinguish, in view of their membership and legal status, two more kinds of organs, namely inter-parliamentary organs and or-

²⁰ Comp. W. MORAWIECKI, *Narody Zjednoczone. Zamierzenia i rzeczywistość* [*The United Nations. Intentions and Reality*], Warszawa 1970, p. 384; H. G. SCHERMERS, *op. cit.*, pp. 100, 103.

²¹ Z. M. Klepacki draws the same conclusion. See Z. M. KLEPACKI, *The Organs...*, p. 50.

²² Comp. C. EAGLETON, *International Organization and the Law of Responsibility*, RCADI, vol. 76, 1950, p. 390. J. P. RITTER, *La protection diplomatique à l'égard d'une organisation internationale*, "Annuaire Français de Droit International", 1962, p. 414, E. A. Sibaeva, *Pravovoi status pravitel'stvennykh organizacii*, Moskva 1972, p. 130.

gans of a committee type representing specific social or economic interests.²³

The interparliamentary organs are composed of members of parliament chosen by the parliaments of member-states, or persons elected directly by the citizens of these states, as was the case for the first time in the direct elections to the European Parliament. The members of the interparliamentary organs enjoy full independence as far as their official functions are concerned, they are not subordinated to their own state or to the organization; they perform their duties on behalf and in the interest of their electors. None the less, they enjoy far reaching privileges and immunities granted to them by the organization, on top of the privileges and immunities which they enjoy as members of their own national parliaments.²⁴

In accordance with the statutory provisions these organs control the activities of other organs of the organization and serve in a consultative capacity. It must, however, be pointed out that these broad powers of the interparliamentary organs are of minor real importance,²⁵ for the exercise of these powers is not very effective, among other things because of its form. The interparliamentary organs are spending their time on debate and taking resolutions, which have no legally binding power, can at best exercise moral or political pressure. Thus, in practical terms, the interparliamentary organs have little opportunity to commit wrongful acts. For that reason, as well as for the above mentioned independence of the persons composing these organs, there is no point in pursuing further the consideration of the problem of attribution of the acts of interparliamentary organs to the organization.

The organs of representatives of economic and social life are of an auxiliary nature. They act in the form of expression of opinion when asked to do so by the principal organs of the organization, which are free to take such opinions into consideration when formulating their decisions. These opinions express not only the personal views of the members, but in the first place the attitude of the entire group of interests.²⁶ In spite of the great similarity of their legal status to the position of experts of the organization,²⁷ it is rather impossible to attri-

²³ Z. M. KLEPACKI (*The Organs...*, pp. 9—10) proposes to call such organs "organs of representatives of economic and social interest groups".

²⁴ For a broader discussion see *ibid.*, pp. 60—61.

²⁵ Such an opinion is expressed by (among others) H. G. SCHERMERS, *op. cit.*, pp. 236, 241.

²⁶ This justifies the contention that these organs perform certain controlling functions. *Ibid.*, p. 178.

²⁷ Z. M. KLEPACKI, *The Organs...*, p. 62.

bute the acts of these persons to the organization. The whole problem seems rather of a hypothetical nature, since it is highly unlikely that they might commit a wrongful act involving the violation of an international obligation of the organization.

3.4. The Attribution of Acts of Organs Placed at the Disposal of the Organization

The organization can make use of organs "borrowed" from other organizations or states in various circumstances, for instance in order to execute certain administrative tasks outside the place of residence of the organization, or in order to perform some operational functions. In actual practice the use of organs of other subjects is restricted to the use by the organization of national contingents of armed forces for peace-keeping operations undertaken by the organization. Such peace-keeping forces were set up on several occasions by the United Nations in Cyprus, the Congo or the Middle East.

According to the general rule, three conditions must be met simultaneously in order to attribute to a subject the actions of an organ placed at his disposal by another organ. Such an organ must perform tasks and functions not of its national authority, but of the subject at whose disposal it remains; it must act in the latter's name and in conformity with the latter's instructions; it must remain under the latter's exclusive and effective control. As far as the UN peace-keeping forces are concerned all these three conditions are fulfilled.

The legal status of the members of the UN peace-keeping forces is not uniform, because of the varying degree of intensity of the functional link binding them with the state on the one hand, and with the organization on the other. In the status of the basic personnel the dominant link is that with the state. This excludes the possibility of attribution to the organization of the acts of the basic personnel on the ground of a functional link (this principle applies, however, as far as the attribution of the behaviour of high ranking officers is concerned). It cannot be expected that a state, deprived to a large degree of its influence on the attitude of its national contingent placed at the disposal of the organization (it cannot issue orders which serve the interests of the state) will agree to assume responsibility for the acts of the members of that contingent. Under no circumstance will there be a case for the application of the principle of functional link. On the other hand, the attribution of the acts of the peacekeeping forces to the subject, at whose disposal they had been placed, is fully justified. The UN meeting all required conditions, it is to it that the wrongful behaviour of armed forces used in peace-keeping operations must be attributed.

This has been confirmed by the practice of the United Nations. The UN did not question its responsibility for the acts of the peace-keeping forces operating in the Congo, as expressed in the letter of the UN Secretary General to the Minister of Foreign Affairs of Belgium concerning indemnity claims of Belgian nationals for damages suffered as a result of the actions of UN peace keeping forces in the Congo. The UN did not disclaim responsibility (material) for damages inflicted to third persons by the armed forces in situations not resulting from military necessity.²⁸ The UN accepted responsibility for the behaviour of the peace-keeping forces in the Congo which caused the death of officials of the International Red Cross in the Congo.²⁹ The payment of indemnities confirms the view that the UN recognized the acts of the peace-keeping forces as their own.

There are no major divergences of opinion among scholars as to the principles of attribution of the acts of national contingents of armed forces placed at the disposal of an international organization and the responsibility for such acts.³⁰ The same unanimity prevailed during the discussion held in the Institute of International Law on the application of the law of war to the military operations of the United Nations. Although this discussion concentrated mainly on the question of responsibility of the organization, it is obvious that responsibility implies the recognition of the acts of the national contingents as its own.

4. The Scope of Attribution of the Acts of Its Organs to the Organization

Of great practical importance is the delimitation of the boundaries of attribution to the organization of the wrongful acts of its organs.

²⁸ See "Nations Unies. Annuaire Juridique", 1965, p. 41. During its earlier peace-keeping operations the UN paid reparations, while avoiding a clear acknowledgement of its responsibility. Comp. F. SEYERSTED, *UN Forces. Some Legal Problems*, "British Yearbook of International Law", vol. 31, 1961, p. 420.

²⁹ "Annuaire de l'Institut de Droit International", vol. 1, 1971, p. 52, footnote 1.

³⁰ D. W. BOWETT, *United Nations Forces. A Legal Study of United Nations Practice*, London 1964; A. di BLASSE, *Sulla responsibilit  internazionale per attivit  dell'ONU*, "Rivista di Diritto Internazionale", vol. 57, 1974 No. 2; M. BOTHE, *Streitkr fte internationaler Organisationen*, K ln 1968. An opposing view is expressed by L. A. MODIORJAN, *Otvetvennost' v sovremennom me dunarodnom prave*, "Sovetskij E zegodnik Me dunarodnovo Prava", 1970, p. 149. She considers that the responsibility for the actions of armed forces rests on the states which voted in favour of their creation and which provided contingents. She avoids, however, a direct statement concerning the attribution of the acts of armed forces divorced from the origin of the means enabling to exercise responsibility.

Following contemporary views on the responsibility of states for the acts of their organs exceeding their authority (as expressed, among others, in Article 10 of the Draft Convention on the Responsibility of States), it can be stated that an organization is responsible for the acts of its organs in similar situations (however, with an exception). Many arguments motivate such an interpretation. The duties of the organs of organizations are, as a rule, defined in a ambiguous manner, thus lending themselves to various interpretations. Hence, the greater danger, than in the case of state organs, of the organs of the organizations exceeding the boundaries of their authority, even when acting in good faith.³¹ The specific nature, the variety and uniqueness of the functions and aims of the organizations implemented by persons linked to them functionally, make it difficult or even impossible to attribute their behaviour to another subject than the organization. Furthermore, it does not seem realistic to recognize acts exceeding the competence of such persons as acts of private persons, given the privileges and immunities enjoyed by persons employed by the organizations and the weakened links between them and their states. The problem of the procedure relating to international claims resulting from acts committed by persons representing the organs of an organization but treated in a specific sphere of their activities as private persons would be insoluble. Therefore, if we eliminated the attribution to the organization of the actions of its organs exceeding their authority, we would create an area of impunity in which the violation of international obligations by such organs could occur freely. This of course is unacceptable because of the need to ensure the security of international intercourse.

The International Court of Justice in its consultative opinion concerning Certain Expenses the UN expressed its views on the scope of legality of the actions of an organization, saying that when an organization takes an action which justifies the contention that such action is aimed at fulfilling one of the purposes of the United Nations one may presume that the action is not *ultra vires*.³² In the same opinion the International Court of Justice recognized that an organ of an organization can exceed its authority; such behaviour is illegal from the point of view of the internal rules of the organization, which is none the less responsible for its effects *vis à vis* a third party. Thus, the

³¹ Lately on the subject of acts *ultra vires* of an organization see E. OSIEKE, *Ultra Vires Acts in International Organizations. The Experience of the ILO*, BYBIL, 1976—1977, and *Unconstitutional Acts in International Organizations: The Law and Practice of the ICAO*, "The International and Comparative Law Quarterly", vol. 28, 1979, No. 1.

³² ICJ Reports, 1962, p. 168.

behaviour of the organ is attributed to the organization. The opinion of the International Court of Justice is questionable on two accounts. First, by founding the evaluation of the legality and force of the acts of an organization on a presumption one reduces its absolute value. For, the weight of the presumption can vary, depending of the context in which it is used.³³ Second, the argument of the Court is based, in principle, on a reasoning *per analogiam* with the situation of a state; this simplifies the case, since it ignores the different character of the links between the organs and the organization.

The scope of attribution to the organization of the acts of its organ exceeding their authority depends on the degree of functional linkage of the organs with the organization. As an act of the organization one must recognize the decisions taken by the inter-state organs as taken in conformity with the relevant rules of the organization and representing the resultant of the will of the member-states of the organization.³⁴ As a matter of principle, these organs are entitled to move only within the limits of authority given to them by the member-states. By exceeding these limits in their behaviour they disregard their integral link with the organization. At the same time such behaviour involves new obligations on member-states imposed upon them without their consent. This may lead to protests by states against decisions considered by them as unconstitutional. Such protests bear witness of the absence of a common will and therefore such acts cannot be considered as acts of the organization.³⁵ Hence, the attribution to the organization of acts *ultra vires* by interstate organs is without foundation.

The question arises as to how a decision taken by an inter-state organ of an organization and recognized by a minority of member-states as illegal because the organ had overstepped its authority is to be treated. The following formal solution can be envisaged. The element distinguishing a decision of an organization from an international treaty is the *voluntas* of the organization.³⁶ Hence, when the element of common will is absent, we are confronted by an international agreement concluded by a group of states who voted in favour of a certain solution. These

³³ E. LAUTERPACHT, *The Legal Effect of Illegal Acts of International Organizations*, in: Cambridge..., pp. 111 and 117.

³⁴ See also J. P. LAUGIER, *Contribution à la théorie générale de la responsabilité des organisations internationales*, Aix-Marseille, mimeographed text, p. 237.

³⁵ Such a role of the states' protest is emphasized by B. CONFORTI, *Le rôle de l'accord dans le système des Nations Unies*, RCADI, 1974, vol. 142, pp. 202—211, 220.

³⁶ K. SKUBISZEWSKI, *Enactment of Law by International Organizations*, BYBIL, 1965—1966, p. 225

states pledged themselves to accept certain obligations, which had not been provided for in the relevant provisions of the organization.³⁷ The dissenting states, protesting against such a decision as violating the provisions of the organization and therefore involving greater obligations compared to those arising from the membership of the organization, cannot be considered as being parties to that agreement.

Acts *ultra vires* by international functionaries can take two forms. They can reflect behaviour exceeding the limits of their authority or violating the established principles governing the application of the instruments placed at the disposal of a person acting in the capacity of a functionary of an organization. In common practice these two aspects are intertwined in the illegal behaviour of international functionaries qualified as *ultra vires* activity.

Many scholars consider the behaviour of the UN Secretary General conducting the Congo operation as an example of an activity *ultra vires*.³⁸ It may be asked whether in view of the partiality of the Secretary General and his obvious inclination to overstep his authority, which in effect resulted in actions directed against the organization as a whole, the organization can isolate itself from the actions of its Secretary General. Does the activity *ultra vires* of the Secretary General cut off the functional link with the organization to a degree justifying the non-attribution of his actions to the organization? And if the answer is "yes" to whom are these actions to be attributed? There seems to be no clear cut solution to these problems. It seems that because of the specific position of the Secretary General, his link with the organization is very strong during the entire period of his office and that is why all his actions, including those exceeding his authority must be attributed to the organization. Besides, to whom could these actions be attributed, since the Secretary General was acting in the name of the organization and, in his opinion, so as to fulfil his mission to the best of his abilities? By appointing a person to the post of Secretary General the organization accepts certain risks including the risk of having to assume responsibility for his acts in that capacity (excluding of course his acts as a private person). The organization can minimize that risk by a system of internal checks and controls.

The attribution to the organization of acts *ultra vires* of other international functionaries is theoretically possible and practically justified

³⁷ B. CONFORTI, *op. cit.*, p. 271.

³⁸ W. MORAWIECKI, *Funkcje organizacji międzynarodowej* [The Functions of an International Organization], Warszawa 1971, p. 313; E. PIONTEK, *Sily zbrojne ONZ* [UN Armed Forces], Warszawa 1973, p. 138–140.

by the need to gain the confidence of its partners by the organization. In individual cases the scope of attribution of such acts must be proportionate to the degree of functional linkage of these functionaries with the organization.³⁹ The boundary of attribution to the organization of the acts *ultra vires* of its functionaries must be fixed in proportion to the scope of the immunities and privileges granted to these functionaries.

The attribution to the organization of the acts of its organs exceeding their competence results directly from the existence of a functional relationship (which is a condition *sine qua non*) between the person and the organization. Since such a relationship does not occur with respect to organs placed only at the disposal of the organization, it must be assumed that nothing is attributable to the organization except the acts of these organs taken under the control of the organization in order to perform its own tasks. This is supported by the strict delimitation of the rights and duties of the organization *vis à vis* the "borrowed" organ from the authority exercised on that organ by another subject, i.e. another organization or state.

*
*
*

The study of the legal aspects of the activities of an organization in its international intercourse encounters great difficulties. Their principal cause is the domination of the political role which the organizations play in international relations. In order to enable them to fulfil their functions they are equipped with instruments which hardly lend themselves to legal evaluation. This fact, however, cannot free the organizations as subjects of international law from the obligation to scrupulously respect their international obligations and the rights of other subjects. If the organizations violate these duties, they must expect negative results and assume responsibility, under international law, as demonstrated in actual practice.

Wrongful behaviour of an organization manifests itself in the acts of physical persons constituting the organs of the organization. The nature of links between these persons and the organization justifies the contention that their acts must be treated as acts of the organization itself. In other words, strictly speaking the organization bears no respon-

³⁹ J. P. LAUGIER, *op. cit.*, p. 231 considers that the acts *ultra vires* of international functionaries must be attributed to the organization, for the negative effects do not result from the behaviour of a specific person, but from the failure of the organization itself to foresee and prevent that person to perform that illegal act.

sibility for the behaviour of its organs, but always for its own behaviour. The criteria of recognition of the acts of physical persons as the acts of the organization itself are defined by the institution of attribution. In principle, the attribution to the organization of wrongful acts of its inter-state organs, of the international functionaries and the organs placed at its disposal follows the rules generally accepted in international law. As demonstrated in the present analysis the essential differences result only from the degree of intensity of the functional link between the organ and the organization. The attitudes of various types of organs are attributed to the organization in a somewhat different manner, both as regards wrongful behaviour within the competence of the organ and wrongful behaviour overstepping that competence.

The establishment of rules governing the attribution to the organization of the acts of its organs contributes to the general specification of the conditions of the exercising responsibility by an international organization under international law. The benefits to be derived from the clarification of the legal situation in this field are obvious. Legal clarity may prevent conflicts and facilitate their speedy solution, thus promoting the effectiveness of the organization.

The Problem of States' Responsibility in International Law for the Activities of Mass Media

by KRYSTYNA WIEWIÓROWSKA

1. The Prohibitions of Propaganda in International Law

The problem of propaganda activity is not a new phenomenon in international relations. There are many bilateral treaties containing provisions prohibiting the spreading of a specific kind of propaganda.¹

Similar prohibitions can also be found in multilateral treaties. The International Convention of 1936 dealing with the use of radio broadcasting in the cause of peace provided that the contracting parties would prohibit or, should such a case arise, cease immediately the broadcasting on their territory of programmes which were detrimental to international understanding, incited the population of one country to act against another state, in contravention of international order and security; the Convention obligated the Contracting States to make sure that the programmes broadcast on their territory would not incite to war or to action which might lead to war.

Pursuant to Article 20 of the Covenant on Civil and Political Rights:

"1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

After World War II many efforts were undertaken by the United Nations aimed at drafting internationally binding instruments prohibiting specific kinds of propaganda. The first step in this direction was Resolution 110/II adopted in 1947 condemning all kinds of propaganda which may provoke or incite to war, threaten international peace or

¹ See J. B. WHITTON, *Radio Propaganda — A Modest Proposal*, "American Journal of International Law", 1958, vol. 52, No. 4, p. 741; V. van DYKE, *The Responsibility of States for International Propaganda*, "American Journal of International Law", 1940, vol. 34, p. 58; J. M. KOLOSOV, *Massovaja informacija i meždunarodnoe pravo*, Moskva 1974, p. 35 ff.

promote acts of aggression. The Resolution called also on all states to support by all available means at their disposal friendly international relations.

Problems of propaganda were also discussed at the United Nations Conference on Freedom of Information held in 1948. The resolutions which the Conference adopted contained an unequivocal condemnation of all forms of propaganda which might lead to violations of peace or acts of aggression. In 1950 the United Nations General Assembly passed a resolution condemning indirect or direct aggression as a crime against international peace and security and a resolution condemning propaganda against the peace in the form of incitement to conflict or acts of aggression.²

The prohibition of intervention in the internal affairs and foreign policy of other states by way of acts of propaganda found its reflection in the Declaration adopted by the XX General Assembly of the United Nations. The Declaration reaffirmed the inadmissibility of foreign intervention in the internal affairs of states and the inviolability of their independence and sovereignty.³ It stated that indirect intervention constituted a violation of the United Nations Charter and declared that no single or group of states had the right to intervene directly or indirectly in the internal or foreign affairs of other states. The prohibition of intervention by way of propaganda in the internal affairs of other states was again reaffirmed in 1970 in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Conformity with the United Nations Charter⁴ adopted at the XXV session of the UN General Assembly. The Declaration stated, among other things that intervention and all attempts at intervention constituted a violation of international law.

Important provisions concerning the illegality of propaganda are contained in the Declaration on Education of Societies to Live in Peace adopted at the XXXIII session of the UN General Assembly at the initiative of the Polish Delegation.

In the vast literature dealing with the subject the classification of propaganda is based on various criteria. When applying the criterion of the recipient it is possible to distinguish internal propaganda, or propaganda destined for the domestic market, and foreign propaganda, destined for the recipient abroad.⁵ In socialist literature the funda-

² Doc. UN A/1844, Supplement No. 1: *UN Yearbook*, 1950, pp. 203—204.

³ Resolution 2131/XX of December 21, 1965; Doc. UN A/6014, Supplement No. 14.

⁴ Resolution 2625/XXV of October 24, 1970, Doc. UN A/8028, Supplement No. 28.

⁵ See M. SZULCZEWSKI, *Propaganda polityczna [Political Propaganda]*, Warszawa 1971, p. 142. By the SAME AUTHOR: *Informacja — element pokojowego*

mental premisses is that "the contents, forms and methods of informing public opinion about internal and external affairs as well as information concerning internal problems and the attitude of the state and society towards international problems for external consumption are matters belonging to the exclusive and sovereign competence of states".⁶ This view is shared by J. M. Kolosov who states that: "the distribution of information within one's own society belongs to the internal competence of the state", with the reservation that it does not apply to information prohibited by international law.⁷

Another criterion applied in classification of propaganda is the distinction between propaganda in times of peace and in times of war. It is being stressed that much depends on the mutual relations among states. When these relations are good, propaganda is relatively mild. "The state of mutual relations in the field of information and propaganda is a reflection of the political relations".⁸ The principle of non-interference is binding upon all states; "non-interference in the affairs of another state applied to this sphere of relations [in the sphere of the exchange of information through the mass media — WK] implies the rejection of actions undertaken during the period of the cold war and labelled as propaganda expansion".⁹

The statement that in war propaganda is ruled by other principles does not mean that in times of war all forms of propaganda are permitted. As rightly pointed out by Polish authors "expressly prohibited are such contents which incite or propagate aggressive war, genocide, war crimes, voluntary military service of the population of occupied territories in the armed forces or auxiliary detachments of the occupying power, violation of norms and customs of international rules of war".¹⁰

The author of the preceding quotation points out that "together with the establishment of penal responsibility for war crimes, the penal responsibility for the propaganda of such crimes derives from the general principles of common penal law as an implication for the crime

współistnienia [Information — an Element of Peaceful Coexistence], Warszawa 1974, p. 157; T. LEŚKO, *Zakaz propagandy w prawie międzynarodowym* [The Prohibition of Propaganda in International Law], "Wojskowy Przegląd Prawniczy", 1974, No. 1, p. 53; B. SUJKA, *Międzynarodowa działalność propagandowa i informacyjna* [International Propaganda and Information Activity], "Sprawy Międzynarodowe", 1973, No. 6, p. 9.

⁶ B. SUJKA, *op. cit.*, p. 8.

⁷ J. M. KOŁOSOV, *op. cit.*, p. 49.

⁸ B. SUJKA, *op. cit.*, p. 20.

⁹ M. SZULCZEWSKI, *Międzynarodowy obieg informacji* [The International Flow of Information], "Sprawy Międzynarodowe", 1976, No. 5, p. 33.

¹⁰ T. LEŚKO, *op. cit.*, p. 52.

of inciting to commit these crimes".¹¹ This view is shared by J. B. Whitton who states that "if it is illegal for a state to engage in aggressive war, incitement thereto, through radio propaganda or otherwise, may properly be considered a violation of an international duty".¹²

Having studied international practices from the time of the French Revolution to World War II. V. van Dyke states that: "The above facts give some justification for the conclusion that in spite of numerous violations, the principle that states are obliged to refrain from spreading propaganda, in a friendly foreign country, hostile to its government is, in international custom, accepted as law".¹³

Some writers attempt to define propaganda labelled as subversive or hostile.¹⁴ It is generally considered that this is a singular kind of propaganda, "differing from other kinds because of its extreme, negative contents".¹⁵ However, because of the subjective nature of such opinion the concept of "hostile propaganda" cannot be easily defined. The same terms can be used by the opposed sides. Each side is inclined to brand as "hostile propaganda" entirely different information and opinions. That is why any attempt at establishing unequivocally the meaning of "hostile, or subversive propaganda" cannot lead to generally accepted results in modern international relations.¹⁶ Many authors consider that there is a need to conclude an international agreement which would explicitly enumerate the contents whose spreading by propaganda would be recognized as violating the law.¹⁷

The idea of concluding such an international agreement may be justified, but already today it is possible to condemn as illegal any propaganda inciting to war and war crimes, as well as any propaganda of racism, colonialism and other acts incompatible with international law.

Also as illegal should be considered propaganda constituting interference in the domestic affairs of other states. This concerns such propaganda contents which fit into the term "interference".¹⁸

¹¹ *Ibid.*, p. 53.

¹² J. B. WHITTON, *op. cit.*, p. 740.

¹³ V. van DYKE, *op. cit.*, p. 65.

¹⁴ On the interpretation of the concept of subversive propaganda see A. ŁA-WROWSKI, *Amerykańska propaganda socjologiczna* [*American Sociological Propaganda*], Warszawa 1975, p. 21,

¹⁵ *Ibid.*, p. 20.

¹⁶ T. LEŚKO, *op. cit.*, p. 57.

¹⁷ J. M. KOLOSOV, *op. cit.*, p. 49 and the literature referred to therein.

¹⁸ See Q. WRIGHT, *Subversive Intervention*, "American Journal of International Law", 1960, vol. 54, No. 3, p. 521 ff.; D. D. SMITH, *International Telecom-*

2. The Responsibility of States for Acts of Governments and Legal and Natural Persons

A state is deemed responsible when it has been established that it violated international law and when a specific act or omission can be imputed to it. According to the doctrine of international law a state is responsible for the act, or omission, of its organs, officials and civil servants.¹⁹

In many countries, both socialist and capitalist, radio and television broadcasting stations have the status of state organs, whereas in many other states they are private property. The same goes for press agencies. The question was raised as to whether a state will be responsible for actions carried out by the media and violating the law only in the first case and not in the second, or whether its responsibility covers both cases.²⁰

Whereas the problem of responsibility of states for the activities of the media acting as state institutions or remaining under direct governmental control is not subject to controversy, the responsibility for the actions of the privately owned media is still a much debated problem. This is closely connected with the very controversial problem of the responsibility of states for the actions of natural or legal persons, be it their nationals or persons of foreign nationality.²¹ Some authors assert that states are responsible for the actions carried out by natural or legal persons on behalf of these states. It is considered that a state can authorise any institution to perform specific governmental functions for which it must carry a responsibility as if these function were performed by its own organs. Under such circumstances, the attitude of these institutions is subject to the general rule according to which the state is responsible for the acts or omission of its organs, for the behaviour of these institutions is tantamount to its own behaviour.²²

munication Control, Leyden 1969, p. 191; Radio Free Europe and Radio Liberty. Hearings before the Committee on Foreign Relations, U. S. Senate, June 23, 1973.

¹⁹ On the subject of the "Act of State" see Report by R. AGO, Doc. UN A/CN. 4/246 Add. 1 of April 7, 1971, pp. 3—37.

²⁰ R. SONNENFELD, *Podstawowe zasady odpowiedzialności międzynarodowej państwa* [Fundamental Principles of the International Responsibility of State], in: *Odpowiedzialność państwa w prawie międzynarodowym* [Responsibility of State in International Law], Warszawa 1980.

²¹ J. SYMONIDES, *Odpowiedzialność państwa w prawie międzynarodowym* [The Responsibility of State in International Law], "Studia Prawnicze", 1971, pp. 54—55.

²² B. GRAEFRATH, E. OESER, P. A. STEINIGER, *Völkerrechtliche Verantwortlichkeit der Staaten*, Berlin 1977, p. 88.

Great controversy arises in connection with the responsibility of a state for the actions of a private person, who performs neither *de iure* nor *de facto* an official function. Under these circumstances a state, on whose territory the illegal act has either been performed or prepared, bears a responsibility for the failure to prevent the illegal act or for the failure to prosecute the offender, but cannot be held responsible for the actions of these persons.

The problem of the responsibility of states for propaganda activities directed against another state depending on the legal status of the institution engaged in such activity has been the subject of extensive discussion. As far as the Western doctrine is concerned it can be stated that some writers represent the view that "a state is bound under international law to refrain from spreading propaganda in a friendly foreign country hostile to the latter's government, but that aside from special treaty provision it is under no responsibility with respect to private propaganda activities proceeding from its territory".²³ Similar opinions are held by Lauterpacht,²⁴ L. Preuss,²⁵ A. M. Stuyt²⁶ and J. B. Whitten.²⁷

There are also opposite views to the effect that "any institution directed against the existence or security of another state violates international law. Each state is duty bound to make sure that no such institution is established neither by its nationals nor foreign nationals, that it does not carry out its activities on the territory under its jurisdiction".²⁸

It is also maintained that states are duty bound to prevent hostile propaganda spread by private persons against other states and, failing to do so, they bear international responsibility".²⁹ A similar opinion is held by W. V. O'Brien³⁰ and also by Q. Wright, who states that "[...] the conduct or undue toleration of such propaganda by a state should be

²³ V. van DYKE, *The Responsibility of the State in International Law*, New York 1928, p. 73.

²⁴ H. LAUTERPACHT, *Revolutionary Propaganda by Governments*, 13 "Grotius Society Transactions," vol. 143 (1928), quoted by J. B. WHITTEN, *op. cit.*, p. 739.

²⁵ L. PREUSS, *International Responsibility for Hostile Propaganda Against Foreign States*, "American Journal of International Law", 1934, vol. 28, No. 3, p. 649.

²⁶ A. M. STUYT, *Reflections on International Propaganda*, "Netherlands International Law Review", 1977, vol. 24, No. 1—2, p. 282.

²⁷ J. B. WHITTEN, *Propaganda and International Law*, "Revue de Droit Contemporain", 1948, p. 740. See also the bibliography referred to therein.

²⁸ F. von LISZT, *Le droit international. Exposé systématique*, Paris 1927, p. 69.

²⁹ M. R. GARCIA-MORA, *International Responsibility for Hostile Acts of Private Persons Against Foreign States*, The Hague 1962, p. 108.

³⁰ W. V. O'BRIEN, *International Propaganda and Minimum World Public Order*, in: *International Control of Propaganda*, New York 1967, p. 155.

treated merely as an international delinquency, justifyig diplomatic demands for preventive action or reparation by the injured state."³¹ The view that the international responsibility of states for the activities of mass media differs, depending on whether these activities are being carried out by governmental institutions (state propaganda) or by private persons (private propaganda) is criticized by the doctrine of the socialist states.³²

3. State Responsibility for Direct Television Broadcasting

The political and legal problems connected with the responsibility of states for the activities of mass media came into light in the course of the negotiations concerning the adoption of special principles regulating direct television broadcasting undertaken by the United Nations in 1969.³³

The transmission of television programmes via satellites has been taking place for more than a decade. Under the existing systems of satellite television the satellite transmits the signals emitted by the ground stations to the ground receiving stations which transmit them to the individual receiving sets. Thus, the states controlling the transmitting stations have a decisive say about the programmes which can be received by the public on their territory. However, an entirely new situation will arise when direct television broadcasting, i.e. the direct transmission of television programmes via satellites to the individual viewer without participation of the retransmitting station, become a practical possibility. It is not true that the situation will be similar to that existing today in the field of radio broadcasting. Television is (at least as far as the developed countries are concerned) the most pop-

³¹ Q. WRIGHT, *The Crime of War-Mongering*, "American Journal of International Law", 1948, vol. 42, p. 132.

³² It is considered (see B. SUJKA, *Wybrane aspekty działalności propagandowej poprzez środki masowego przekazu* [Selected Aspects of Propaganda Activity by Mass Media], "Sprawy Międzynarodowe", 1970, No. 12, p. 28) that "[...] this formal criterion is needed to enable American lawyers to justify the contention that states are not responsible for propaganda activities carried out by private persons. However, the decisive factor is in whose name and in whose interest the propaganda is spread, whether and to what extent it constitutes an interference in the sovereign rights of another state".

³³ For a broader presentation of the subject see K. WIEWIÓROWSKA, *Prawnomiędzynarodowe i polityczne aspekty bezpośrednich transmisji satelitarnych* [International Political and Legal Aspects of Direct Broadcasting by Satellites], "Sprawy Międzynarodowe", 1974, No. 3.

ular mas medium. In the highly industrialized countries of the world the television viewers account for 97—98 per cent of the total population. Technically it will be very difficult to take counter measures capable of preventing the transmission of undesirable programmes by direct television broadcasting. This explains why the idea of adopting special principles applying to direct television broadcasting was supported almost unanimously. During the negotiations which took place in UN on this subject one of the most thorny problems was that of the programme content (prior consent) of direct television broadcasting.

In the Draft Convention submitted in 1972, the USSR, supported by the socialist countries, proposed the adoption of a principle stating that the emission of direct broadcasting satellite television into the territory of third states may be performed only with the consent of the state, onto which territory the given emission is to be projected. According to the Soviet proposal, the emission of programmes without such consent would lead to international responsibility of the broadcasting state.

The USA rejected the adoption of the principle referred to as "prior consent" holding, that it would interfere the principle of freedom of information. Several other countries, such as Canada, Sweden and those of the Third World admitted, that the adoption of the "prior consent" principle would not contradict the idea of free exchange of information, which they support. During the negotiations, a draft of the named principle was elaborated.

A direct television broadcasting service by means of artificial earth satellites specifically directed at a foreign state, which shall be established only when it is not inconsistent with the provisions of the relevant instruments of the International Telecommunication Union, shall be based on appropriate agreements and/or arrangements between the broadcasting and receiving states or the broadcasting entities duly authorized by the respective States. This is to facilitate the freer and wider dissemination of information of all kinds and to encourage co-operation in the field of information and the exchange of information with other countries.

For that purpose a state which proposes to establish or authorize the establishment of a direct television broadcasting service by means of artificial earth satellites specifically directed at a foreign state shall without delay notify that state of such intention and shall enter into consultation with that State if the latter so requests.

No such agreements and/or arrangements shall be required with respect to the over-spill of the radiation of the satellite signal within the limits established under the relevant instruments of the International Telecommunication Union.

No such agreements and/or arrangements or consultations shall be required with respect to the over-spill of the radiation of the satellite signal within the limits established under the relevant instruments of the International Telecommunication Union.

Whereas it was easy to arrive at a so-called "positive definition" and to agree what aims must be pursued by such programmes, it was very difficult to achieve a common understanding concerning the programme which ought to be prohibited. The delegation of Argentina stated in its working document that programme content must be defined in a very broad and general manner, for

"it does not seem likely to regulate the programme content of direct television broadcasting on a global scale".³⁴

The same assumption has been adopted by the authors of the Canadian and Swedish proposal who do not believe that the adoption of common standards concerning programme contents is a practical and realistic proposition.

"Unrealistic, because it is well known that even within domestic jurisdiction issues of appropriate content are under constant debate as social and ethical values evolve and would, at the international level, be a continuing source of friction and misunderstanding; impractical, because such an elaboration could not take account of very real differences in cultural and ethical values as well as in national legislation in the field of communication and information."³⁵

The Working Group on Direct Television Broadcasting set up by the United Nations took a similar view and stated that the adoption of a common code of conduct which would regulate the contents of direct television broadcasts would give rise to serious difficulties, because of the variety of standards which determine in various countries the acceptability of program³⁶.

The USSR proposals³⁷ and the French proposals³⁸ were based on different principles. These two documents contain an extensive list of programmes, whose transmission would be, because of their contents, considered as violating the law and involving international responsibility, and programmes subject to special legal regulation. Programmes whose transmission ought to be banned include those spreading hostile propaganda.

A draft proposal concerning programme contents has been worked out by the Committee for the Peaceful Uses of Outer Space. The pro-

³⁴ Doc. UN A/AC. 105/WG. 3/V/CRP. 3.

³⁵ Doc. UN A/AC. 105/117.

³⁶ Doc. UN A/AC. 105/66.

³⁷ Doc. UN A/8771 and A/AC. 105/WG. 3/CRP. 1.

³⁸ Doc. UN A/AC. 105/83.

posal is divided into three parts: part one contains provisions concerning not so much the contents but the forms of cooperation; part two deals with the transmission of commercial and advertisement programmes; the third suggests the adoption of provisions concerning contents whose spreading would be prohibited and states that

"[...] states undertaking activities in direct television broadcasting by satellites should in all cases exclude from the television programs any material which is detrimental to the maintenance of international peace and security, which publicizes ideas of war, militarism, national and racial hatred and enmity between peoples, which is aimed at interfering in the domestic affairs of other states or which undermines the foundations of the local civilization, culture, way of life, traditions or language".³⁹

It must be emphasized, however, that the adoption of this draft is by no means a foregone conclusion. Furthermore, the draft principle concerning direct television broadcasting is to be adopted as a resolution of the General Assembly of the United Nations and therefore will have no binding power. Thus, pending the adoption of treaty rules on the subject the limitations covering the programme contents of direct television broadcasting by satellite will be the same as those applying at present to propaganda spread by conventional mass media.

Many essential problems arise in connection with state responsibility for the transmission of television programmes by satellite. Such activities will be subject to both the general principles of international law and the specific provisions of space law.

The principle of responsibility for activities carried out in outer space was first formulated in the Declaration of the Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space adopted by the UN General Assembly in 1963,⁴⁰ and later included as Article VI in the Space Treaty of 1967.⁴¹

The formula adopted by the Space Treaty of 1967 that

³⁹ Doc. UN A/AC. 105/271.

⁴⁰ See UN General Assembly Resolution 1962/XVIII/ of December 13, 1963.

⁴¹ "States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the moon and other celestial bodies, shall require authorization and continuing supervision by the State concerned. When activities are carried on in outer space, including moon and other celestial bodies, by an international organization, responsibility for compliance with this Treaty shall be born both by the international organization and by the States Parties to the Treaty participating in such organization".

"States bear international responsibility for national activities [...] whether such activities are carried on by governmental agencies or by non-governmental entities"

is not understood in the same way in the doctrine of space law. J. Rajski states that: "The Treaty of 1967 has adopted the principle according to which the exploration and use of outer space and celestial bodies can, in principle, be carried out only by subjects of international law". The same author considers that this is justified by, on the one hand, the possible international implications of that kind of activity and, on the other hand, by the need to make sure that it will be undertaken in the pursuance of aims compatible with the interests of mankind as a whole. The state can carry out such activity directly or indirectly, through authorized natural or legal persons. "Such authorization implies, for the persons concerned, the right to develop an activity in outer space within specific bounds set by the state which issued the authorization. It involves also specific obligations for the state authorizing such activity. Of fundamental importance is the obligation to exercise constant control and the acceptance of international responsibility for actions undertaken by such persons in violation of the provisions of international law."⁴² It can therefore be concluded that J. Rajski is inclined to recognize the provision of Article VI of the Space Treaty of 1967 as covering the activities of natural persons and non-governmental entities acting on behalf and on order of the state; this, pursuant to the generally accepted view in the doctrine of international law involves the responsibility of the state.

M. G. Marcoff considers, and in my opinion quite rightly so, that in space law the scope of state responsibility has been considerably extended; there was also a change in the previously accepted rules concerning the possibility to ascribe to the state specific actions or failures to act by natural or legal persons.⁴³

The draft provisions concerning direct television broadcasting by satellite explicitly accept the admissibility of such activity being carried out not only by states and intergovernmental organizations, but also by persons and institutions under the jurisdiction of states. Thus, the preamble states that

"The General Assembly [...] consider that States as well as international governmental and non-governmental organizations including broadcasting asso-

⁴² See J. RAJSKI, *Odpowiedzialność międzynarodowa za szkody wyrządzone przez obiekty kosmiczne* [*The International Responsibility for Damages Caused by Outer Space Objects*], Warsaw 1974, p. 58.

⁴³ M. G. MARCOFF, *Droit international public de l'Espace*, Paris 1973, p. 532.

ciations, should base their activities in this field upon and encourage international co-operation [...]"

A similar formula is contained in the principle of "rights and benefits", according to which

"Every State has an equal right to conduct activities in the field of direct television broadcasting by means of artificial earth satellites and to authorize such activities by *persons and entities under its jurisdiction*" [italics — WK].

It can be concluded from the above formula that it applies without exception to each person or institution under the jurisdiction of the state concerned.

It seems that in order to determine whether an action or the failure to act can be ascribed to a state, attention must be paid to the interpretation of the terms "national activity" used in the Outer Space Treaty of 1967. The question has been raised in the doctrine of outer space law as to whether state responsibility covers the activity of its nationals or organizational entities under its jurisdiction, or is restricted only to activities by such persons or institutions within its territorial jurisdiction. The latter view is held by J. Fawcett.⁴⁴ J. Rajski asserts, quite rightly, that the decisive criterion of state responsibility is the authorization delivered by the state to a given person or entity to pursue an activity in outer space.⁴⁵ M. Marcoff states that "national activity" can mean, apart from state activity, also an activity of any person subject to the territorial or personal authority of the state.⁴⁶

Another problem arises in connection with the provision contained in the Outer Space Treaty and concerning the requirement to issue to non-governmental institutions and physical persons permits to undertake activities in outer space. The documents of outer space law do not determine the form in which such permits are to be delivered, nor do they provide for specific forms of control. Outer space legal experts expressed the opinion that such permissions could be granted "in any form, even *per facta concludentia*, although, as a matter of principle, such a situation should never arise".⁴⁷ Also the question of the period which such a permit may cover must be left to the competence of the state. None the less, it is being emphasized that rules providing for constant supervision by the state concerned over the activities of non-governmental entities in outer space must be adopted.⁴⁸

⁴⁴ See J. FAWCETT, *International Law and Use of Outer Space*, Manchester 1958, pp. 44—45.

⁴⁵ J. RAJSKI, *op. cit.*, p. 59.

⁴⁶ M. MARCOFF, *op. cit.*, p. 533.

⁴⁷ J. RAJSKI, *op. cit.*, p. 59.

⁴⁸ See *International Space Law*, ed. M. PIRADOV, Moscow 1977, p. 97.

Over the past few years there was a significant increase in the importance of international cooperation in outer-space activities carried out within the framework of non-governmental organizations.⁴⁹ The problem of responsibility of these organizations has not been explicitly defined in outer space law. However, since the Declaration of 1963, the Outer Space Treaty of 1967 and the Convention of 1972 provide only for the responsibility of states and of intergovernmental international organizations, there is a general agreement to the effect that the responsibility for the activities of non-governmental organizations lies exclusively with the states whose institutions or nationals participate in such organizations.⁵⁰

Much more complicated questions arise in connection with the activities carried out in outer-space by so-called "mixed enterprises" or "public-private users". Such entities can be established with the participation of the state acting through its organs, or with the participation of non-governmental institutions, governmental international organizations and multi-national corporations. Considering that the execution of a project in outer space involves high expenditures, risk insurance, production of equipment, consultative services etc., it is clear that the number of possible combinations involving cooperation between governmental organizations and non-governmental entities can be great indeed.

In the course of the discussion on the principles of direct television broadcasting by satellites the Soviet Union and the other socialist states represented the view that the principle of international legal responsibility for activities carried out in outer space contained in Article VI of the Outer Space Treaty of 1967 must be included as one of the principles governing direct television broadcasting.⁵¹ The same assumption was at the basis of the Canadian and Swedish proposal.⁵² The Argentinian proposal also provided for state responsibility for activities in the field of direct broadcasting.⁵³

⁴⁹ I. H. Ph. DIEDERIKS-VERSCHOOR, W. P. GORMLEY, *The Future Legal Status of Non-Governmental Entities in Outer Space: Private Individual Companies as Subjects and Beneficiaries of International Space Law*, "Journal of Space Law", 1977, p. 125.

⁵⁰ See *International Space Law*, op. cit., p. 98; J. RAJSKI, op. cit., p. 53; M. G. MARCOFF, op. cit., p. 533; I. H. Ph. DIEDERIKS-VERSCHOOR, W. P. GORMLEY, op. cit., p. 129.

⁵¹ See Doc. UN A/8771. A similar wording can be found in the later USSR draft proposal of principles in Article VII, Doc. UN A/AC.105/WG.3/CRP.1. See also statement by the delegate of Czechoslovakia — A/AC.105/SR.217, p. 56; Hungary... SR.218, p. 70, German Democratic Republic... SR.237, p. 104.

⁵² See Doc. UN A/AC.105/117, Article IX.

⁵³ Doc. UN A/AC.105/134. A similar wording can be found in the Working

The acceptance in the draft principles governing direct television broadcasting by satellite of the rule of the legal international responsibility of states and international organizations had the support of the Third World countries and several Western countries.

Some states proposed the adoption of a principle providing for the responsibility of the authors and producers of programs.⁵⁴ Such a solution is proposed in the Declaration of Principles accepted by UNESCO.⁵⁵

The provision on the responsibility of the authors and producers of programmes was supported by some states, including Japan, whose further negotiations the view that in the field of direct television broadcasting is not subject to direct state control.⁵⁶ However, as a result of further negotiations the view that in the field of direct television broadcasting by satellite the principle of legal international responsibility of states as provided for in the Outer Space Treaty of 1967 must prevail gained finally the upper hand. The respective draft principle proposed by the Outer Space Committee has the following wording:

"States should bear international responsibility for activities in the field of direct television broadcasting by means of artificial earth satellites carried out by them or under their jurisdiction and for the conformity of any such activities with the principles set forth in this document.

"When direct television broadcasting by means of artificial earth satellites is carried out by an international intergovernmental organization, responsibility for compliance with these principles should be borne by such organization and by States participating in it."⁵⁷

As pointed out above, pursuant to the principles of outer space law and to the draft principles concerning the responsibility of states for direct television broadcasting this responsibility in each case bears states. M. Lachs is quite right when stating that "the acceptance of this principle removes all doubts concerning imputability. How important this is will be appreciated by all those familiar with serious difficulties to which this issue has so frequently given rise in practice.

The law thus identified each state with any activity carried on under its colours in outer space, so that it bears direct responsibility for any such activity."⁵⁸

Paper submitted by Argentina. See Doc. UN A/AC.105/WG.3/V/CRP.3, p. 11.

⁵⁴ For example, France: Doc. UN A/AC.105/83.

⁵⁵ Declaration of guiding principles on the use of satellite broadcasting for the free flow of information, the spread of education and greater cultural exchange.

⁵⁶ Doc. UN A/AC.105/C.2/SR p. 25.

⁵⁷ Doc. UN A/AC.105/271.

⁵⁸ M. LACHS, *The Law of Outer Space. An Experience in Contemporary Law-Making*, Leiden 1972, p. 122.

International Legal Problems of the Protection of the Maritime Environment Against Land-Based Pollution

by TADEUSZ JASUDOWICZ

The development of the rules and regulations aimed at protecting the marine environment against pollution reveals an initial lack of broader and comprehensive perspective of the problem involved. The direction and scope of these fragmentary attempts were determined by new technical problems, and only when they gave rise to acute ecological hazards or caused ecological disasters. Thus, the relevant conventions and their provisions dealt with the protection of the seas against pollution by oil, radioactive substances, caused by ships, dumping their wastes in the sea.¹ These conventions covered, as a rule, only the open sea areas. However, at the same time, the division of the sea areas into specific legal categories influenced the nature and scope of the regulation, in spite of the obvious fact that the marine environment constitutes one indivisible entity² and in total disregard of the general unity of the natural environment and of the necessity to take into consider-

¹ Comp. as regards the prevention and fight against the pollution of the seas by oil: London Convention of May 12, 1954 (with subsequent amendments); Brussels Convention of November 29, 1969; Bonn Convention of June 9, 1969; London Agreement of September 16, 1971 and others. As regards radioactive pollution see: Article 25 of the Convention on the High Seas of April 29, 1958, and the relevant provisions of IMCO and the IAEA. As regards pollution by ships see London Convention of November 2, 1973. As regards dumping see: Oslo Convention of February 15, 1972 and London Convention of December 29, 1971.

² R. ZAORSKI, *Zagadnienie ochrony zasobów biologicznych Morza Bałtyckiego* [Problems of Protection of the Biological Resources of the Baltic Sea], in: *Zagadnienia prawne Bałtyku* [Legal Problems of the Baltic Sea], ed. by L. Gelberg, Wrocław 1969, p. 179, points out that "the pollution by noxious materials of the maritime area of a state (its internal and territorial sea) originating in sewage flowing from its territory could remain without legal consequence were it not for the mutual interaction in the marine environment which is one and indivisible. The violation of the biological equilibrium of the marine environment by one state affects the entire maritime area of the region".

ation the mutual interaction and relationship between the various elements of the natural environment.³ Consequently, because of the differing objects of regulation, of the exclusion of important sources of pollution and the lack of coordination of the various conventions, they failed to provide one comprehensive system covering the legal and organizational aspects of the protection of the marine environment.

Therefore, what is at stake is the creation of one coordinated system of norms and global machinery which would include all general, regional, local and national arrangements. For it is obvious that such an universal system does not exclude particular solutions which develop, add precision and deepen the universal rules, at the same time reinforcing the guarantee that the measures of protection will be put into action. It may be stressed that the universal conventions not only do not exclude but often encourage the conclusion of the regional conventions⁴ and that these, in turn, pave the way towards the conclusion of special local arrangements.⁵

On the other hand, it is important to deal with all pollutants, all sources of pollution, with the routes they travel before reaching the sea.⁶ Furthermore, the thesis on the necessity of inserting the system

³ Comp. among others J. ŁOPUSKI, *Walka o czyste morze* [The Struggle for a Clean Sea], Gdynia 1972, pp. 12, 28, 30; B. M. KLIMENKO, *Gosudarstvennaja territorija* Moskva 1974, p. 85 stresses both "the unity of nature in general, the close mutual relationship between such environments as the earth, water, atmosphere" as well as "the unbreakable unity within each of these environments". Comp. also A. OLSZÓWKA, *Zagadnienie ochrony środowiska na III Konferencji Prawa Morza ONZ* [The Problems of the Protection of the Environment on the III UN Conference on the Law of the Sea], "Technika i Gospodarka Morska", 1980, No. 2, p. 87; Z. KALINOWSKI, *Ochrona wód morskich przed zanieczyszczeniem w świetle polskiego prawa wodnego* [The Protection of the Sea Waters Against Pollution in the Light of the Polish Water Law], "Technika i Gospodarka Morska", 1975, No. 6, p. 339.

⁴ Comp. Article VIII of the London Convention of December 29, 1972; Article 237 Informal Composite Negotiating Text (ICNT) of the III Conference of the Law of the Sea — relevant texts (in): "International Legal Materials. Current Documents" [further as ILM], 1978, No. 6, p. 1293; III UN Conference on the Law of the Sea, Official Records, vol. 8, [...], Sixth Session, New York 1978, p. 34 (also: ILM, 1979, No. 3, p. 686). The Governing Council of UNEP in its Second Session stresses that "UNEP should encourage and support the preparation of regional agreements or conventions on the protection of specific bodies of water from pollution, particularly from land-based sources" — ILM, 1974, No. 4, p. 1035.

⁵ Comp. Article 9, Alineas 1—4 of the Paris Convention of June 4, 1974, Article 3 of the Barcelona Convention of February 16, 1976. For more information and bibliography see notes 34—35.

⁶ J. ŁOPUSKI, *op. cit.*, pp. 27, 28 emphasizes strongly that sources of pollution must not be confused with the ways by which the pollutants penetrate into the marine environment.

of protection of the marine environment into a broader system of protection of the natural environment as a whole involves the coordination of the measures designed to protect the seas with the measures aimed at protecting the other elements of the environment, especially the inland waterways and the atmosphere. In the process, it will be necessary, on the one hand, to extend the national environmental regulation so as to cover the adjacent maritime areas,⁷ and on the other hand, to cover by the regulations of the maritime conventions the activity of states on the land as well as to draw land-locked states into cooperation so as to prevent them from adversely affecting the implementation of the conventions by pollution the sea waters through wastes carried by rivers or the atmosphere.⁸

International organizations — including the UN and its specialized agencies, in the first place UNEP, other competent international organizations, international organs established under treaties dealing with the protection of the environment — have an important role to play in the creation of a system of protection of the marine environment

⁷ The water laws of states cover, as a rule, also the internal and territorial sea. This is the case of the Polish Water Law of October 24, 1974 ("Dziennik Ustaw" — ["Journal of Laws"], No. 38, item 230). Comp. Chapter 2, Part II of the Law on the Protection and Shaping of the Environment of January 31, 1980 ("Journal of Laws", No. 3, item 6). For a broader discussion of the subject see Z. KALINOWSKI, *op. cit.*, pp. 339—340; K. PODGÓRSKI, *Ochrona wód przed zanieczyszczeniem w świetle prawa administracyjnego* [The Protection of Waters Against Pollution in the Light of Administrative Law], Warszawa 1974, pp. 18, 22—23, 26; W. RADECKI, *Ochrona czystości wód morskich w polskim prawie karnym* [The Protection of Clean Sea Waters in Polish Penal Law], "Technika i Gospodarka Morska", 1977, No. 2, pp. 89—90. There are also internal laws directly dealing with the protection of the marine environment, such as the legal acts adopted by the USSR: *On Measures to Strengthen the Protection of the Baltic Sea Basin Against Pollution and On Measures to Prevent Pollution of the Basins of the Black Sea and the Azov Sea*. For a broader discussion of the problem see, among others, J. G. MOISEEV, *Borba Sovetskogo Sojuza za prevraščenie Baltijskogo Morja v more mira*, in: *Sovetskoe gosudarstvo i meždunarodnoe morskoe pravo*, Moskva 1977, pp. 106—107; M. I. LAZAREV, *Okean i buduščee*, Moskva 1976, pp. 44—45; *Sovremennoe meždunarodnoe morskoe pravo*, Moskva 1978, pp. 73—74; A. F. VYSOTSKIJ, *Čornoe more, Meždunarodno-pravovye voprosy*, Kiev 1979, pp. 121—122. Of great originality is the Canadian law adopted in 1970 under the title *An Act to Prevent Pollution of Areas of the Arctic Waters Adjacent to the Mainland and Islands of the Canadian Arctic and the Regulations Respecting the Prevention of Pollution of the Arctic Waters* issued in 1972. Comp. *Zakonodatel'stvo Kanady po voprosu predotvraščeniya zagryzneniya prilagajuščih arktičeskikh morej*, *Sbornik*, Moskva 1976, pp. 11—40.

⁸ See below pp. 158, 163, 166, 170.

and, especially, in its coordination with an overall, comprehensive system of protection of the natural environment.⁹

Of great importance in this sphere are, of course, the works of the III UN Conference on the Law of the Sea, which reflect the acceptance of the desirable and broad vision of the problems of the protection of the marine environment. This found a clear expression in the confirmation of the general obligation to protect and to preserve the marine environment; to prevent, reduce and control pollution, as well as in the acceptance of the principle prohibiting the pollution of the environment of other states and areas outside one's own jurisdiction, of the environment outside the area of the convention, even if this may result from the exploitation of the sea waters not prohibited by the law.¹⁰ Attention must be drawn to the fact that the regulation takes into account all possible kinds and sources of pollution of the marine environment, including pollution from land-based sources and pollution coming through the atmosphere.¹¹ The utility of the convention under preparation, as a general, comprehensive legal act is also enhanced by the fact, that it accepts other forms of legal regulation and does not object to "specific obligations assumed by States under special conventions and agreements concluded previously [...] and to agreements which may be concluded", provided however that they will be applied "in a manner

⁹ Comp. K. WOLFKE, *Międzynarodowe prawo środowiska* [International Law of the Environment], Wrocław 1979, p. 52; W. I. MARKUSINA, in: *Problema okružajušćej sredy v mirovoi ekonomike i meždunarodnyh otnošenijah*, Moskva 1976, p. 273; S. A. MALININ, W. A. MUSIN, *Pravovye problemy morskoi atomnoi dejatel'nosti*, Leningrad 1974, p. 71. These two authors stress that, for example in the resolutions of the General Assembly of the United Nations concerning the protection of the marine environment "no norms are established, no prohibitions introduced, but it results from their textes that they are based on the assumption that the general rule prohibiting the pollution of the marine environment is already in force [...]. These resolutions confirm the general practice and are directed at the establishment of a customary rule of international law". A special Committee on the Protection of the Marine Environment has been set up by IMCO — comp. J. DUTHEIL de la ROCHÈRE, *Une institution spécialisée renaissante: la nouvelle organisation maritime internationale*, "Annuaire Français de Droit International", 1976, p. 460.

¹⁰ Comp. Articles 193—195 ICNT, Comp. also A. OLSZÓWKA, *op. cit.*, p. 90; B. KWIATKOWSKA-CZECZOWSKA, *Ochrona środowiska w dwustumilowej strefie ekonomicznej* [The Protection of the Environment in the 200-Mile Economic Zone], "Przegląd Stosunków Międzynarodowych", 1980, No. 4, p. 70.

¹¹ Articles 208 - 213 ICNT deal with the obligations as regards the specific sources of pollution; Articles 214 - 223 ICNT deal with implementation.

consistent with the general principles and objectives of this Convention".¹²

The kinds of pollution of the marine environment are being classified in various ways, taking into account the nature of the pollutant agents, the environment in which the pollution has its source, the type of human activity which causes the pollution.¹³ Most often one classifies pollutions according to their source, but the lists of these sources differ, because the term "source" is not understood in the same way.¹⁴ In the negotiating text accepted as a basis for the work of the III UN Conference on the Law of the Sea one distinguishes the following pollutions according to the criterion of their source: land-based, from human activities on the sea-bed, from activities in the area, from dumping by ships and from or through the atmosphere.¹⁵

Actually, in all classifications, doctrinal and conventional, one mentions in the first place pollution originating from the land and this is not a mere accident. True enough, it was omitted in the conventional regulations,¹⁶ but it deserves special treatment if only because of its

¹² Comp. Article 237 ICNT. Comp. also A. OLSZÓWKA, *op. cit.*, p. 90; G. A. GLAZUNOV, J. B. MARKOW, *K voprosu o režime zamknutyh i poluzamknutyh morei v sovremennom meždunarodnom prave*, in: *Meždunarodnopravovye problemy mirovogo Okeana na sovremennom etape*, Moskva 1976, p. 124; A. L. KOLODKIN, *Mirovoi Okean. Meždunarodno-pravovoi režim. Osnovnye problemy*, Moskva 1973, p. 208. The author stressing the role of regional measures points out that "they must not contradict the universally accepted rules set forth in multilateral international treaties [...], as provided for in Articles 52 and 103 of the UN Charter". At the same time they must take into consideration "the actions and measures taken by international organizations, and in the first place, by the UN specialized agencies (UNESCO, IMCO)".

¹³ Comp. Sh. ODA, *The Law of the Sea in Our Time*, in: *New Developments, 1966—1975*, Leyden, p. 215; J. ŁOPUSKI, *op. cit.*, p. 16; J. P. BEURIER, P. CADENAT, *Les résultats de la Conférence de Genève sur le droit de la mer*. "Revue Générale de Droit International Public", 1975, p. 760; J. P. LEVY, *Le droit d'environnement marin*, "Revue Française d'Energie", 1973, No. 253, p. 3; N. S. IVANČENKO, *Ohrana prirody*, Moskva 1978, p. 167. The famous classification proposed in 1970 by GESAMP took into consideration both the nature of the pollutants and the type of human activity and provided for two different classifications. For a broader discussion of the subject, see J. ŁOPUSKI, *op. cit.*, p. 16, ff.

¹⁴ Comp. J. ŁOPUSKI, *op. cit.*, p. 28.

¹⁵ Comp. Articles 208—213 and 214—223 ICNT.

¹⁶ A. C. KISS, *Récents traités régionaux concernant la pollution de la mer*, AFDI, 1976, p. 720. The author states that as far as the struggle against pollution of the seas from land-based sources "les règles universelles sont inexistantes ou extrêmement générales". A. KOWALSKI, in: *Umowy międzynarodowe o ochronie morza przed zanieczyszczeniem* [International Treaties on the Protection of the

unquestioned preponderance and leading share in the overall balance sheet of marine environment pollution.¹⁷

Rivers are the main media carrying polluting agents of land origin to the sea, as so rightly stressed by Zaorski.¹⁸ No wonder therefore, that so much emphasis is placed on the relation between the protection of rivers against pollution and the purity of sea waters. This is generally accepted by science,¹⁹ but has so far found little reflection in international conventions.²⁰

Through rivers and by other ways the marine environment is adversely affected by municipal and industrial sewage and wastes, by chemicals used in agriculture, by minerals, like oil and oil products, heavy metals, radioactive substances.²¹ Grave dangers derive from the

Sea Against Pollution], Gdańsk 1977, pp. 10—11, points out that: "No solution was found in the existing conventions for the problem of prevention of pollution from land-based sources". He exaggerates, however, when saying that: "In universal multilateral conventions the problem does not arise". See below p. 162—163.

¹⁷ It is estimated that about 80 per cent, or from 50 to 90 per cent of all sea pollutions originate in land-based sources. Comp. Sh. ODA, *op. cit.*, p. 209; B. KWIATKOWSKA-CZECHOWSKA, *op. cit.*, p. 69; *Sovremennoe...*, p. 42; T. I. SPIVAKOVA, *Pravo i prirodnye resursy pribreznyh zon*, Moskva 1978, p. 80; W. RADECKI, *Srodowisko morskie jako przedmiot ochrony prawa karnego* [The Marine Environment as a Subject of Protection by Penal Law], "Technika i Gospodarka Morska", 1979, No. 11, p. 668; J. ŁOPUSKI, *International Legal Problems of Marine Pollution*, "Polish Yearbook of International Law", 1972—1973, vol. S, p. 79. As regards the Baltic Sea, comp. L. GELBERG, *Problemy prawne współpracy państw bałtyckich* [Legal Problems of Cooperation of the Baltic States], Wrocław 1976, p. 82. As regards the Black Sea comp. A. F. VYSOTSKIJ, *op. cit.*, pp. 120, 131, 136, 138; As regards the Mediterranean Sea comp. *Barcelonskaja konferencija po zaštite Sredizemnogo morja ot zagraznenija*, in: *Materiały po morskemu pravu i meždunarodnomu trgovomu moreplavaniju*, 15, 78, Moskva 1978, p. 49.

¹⁸ R. ZAORSKI, *op. cit.*, pp. 177—178.

¹⁹ Comp. *Sovremennoe...*, p. 74, where it is pointed out that "70 per cent of all pollutants reaching the seas are carried by rivers". This problem is particularly acute in the case of the Baltic Sea, into which fall 200 rivers flowing through highly industrialized regions and carrying annually an average of 450 to 490 cubic kilometres of water, mostly very polluted. See M. JAWORSKI, *Pokojuwa współpraca regionalna państw bałtyckich* [Peaceful Regional Cooperation of the Baltic States], Warszawa 1978, p. 105. Comp. also L. GELBERG, *op. cit.*, pp. 82—83; A. ZAORSKI, *op. cit.*, p. 177; *The Exploitation of the Vistula in the Light of Environmental Protection. Scientific and Technical Seminar [...]*, "Gospodarka Wodna", No. 3, p. 93. As regards the impact of the Danube on the pollution of the Black Sea comp. A. F. VYSOTSKIJ, *op. cit.*, pp. 136—139.

²⁰ Comp. Alinea 2 of the Preamble to the Convention on the Protection of the Rhine Against Chemical Pollution, signed December 3, 1976. Text in: ILM, 1976, No. 2, p. 242 ff.

²¹ Comp. A. F. VYSOTSKIJ, *op. cit.*, pp. 131, 139; T. PARTEKA, A. TUBIELEWICZ, *Problemy metodologiczne programowania zagospodarowania przestrzen-*

functioning of giant ports, nuclear and conventional power plants, etc.²²

It can be said that the recognition of the importance of land-based pollution is not questioned. However, for many years such recognition was purely verbal without practical consequences in the sphere of legal regulation and, generally, in the sphere of international cooperation. The prevailing view was that this problem must be left exclusively within the competence of national states, that it was a local matter which will better be solved by local and national means.

In order to reject such a view it is not sufficient to refer to the regional conventions already in force, which regulate exclusively or *inter alia* the problem of pollution of the sea by agents of land origin. The number of such conventions is not great. They provide no ground

nego Dolnej Odry w planie Makroregionu Północnego [Methodological Problems of Programming of the Exploitation of the Lower Odra in the Plan of the Northern Macro-Region], in: *Odra szlakiem transportowym zespołu portowego Szczecin-Swinoujście* [Odra as a Transport Waterway of the Port-Complex of Szczecin-Swinoujście]. Documents of a Seminar [...], "Prace Instytutu Morskiego", No. 806, p. 77. M. JAWORSKI, *op. cit.*, p. 105; L. GELBERG, *op. cit.*, p. 83; M. I. LAZAREV, *op. cit.*, p. 42; Z. KALINOWSKI, *op. cit.*, p. 339; R. JOŃCZYK, *Wpływ warunków środowiska na zmiany wielkości i składu połowów Zalewu Szczecińskiego* [The Influence of Environmental Conditions on the Volume and Composition of the Catches in the Szczecin Bay], "Technika i Gospodarka Morska", 1979, No. 6, p. 331; L. GÓRECKI, *Ochrona środowiska morskiego* [The Protection of the Marine Environment], "Technika i Gospodarka Morska", 1980, No. 2, p. 337; J. JASIŃSKI, *Zasoby wodne wybrzeża środkowego w świetle prognozy rozwoju gospodarczego* [The Water Resources of the Middle Coast in the Light of the Forecast of Economic Development], "Technika i Gospodarka Morska", 1977, No. 2, p. 104; [J. P.], *Międzynarodowe badania Bałtyku* [International Studies of the Baltic Sea] (BOSEX-77), "Technika i Gospodarka Morska", No. 7, p. 439; H. GURGUL, *Właściwości fizyczne zanieczyszczeń mórz substancjami ropopochodnymi* [The Physical Features of the Pollution of the Seas by Substances Derived From Oil], "Technika i Gospodarka Morska", 1977, No. 2, p. 81; M. JARECKI, *Oczyszczanie wód balastowych w porcie północnym w Gdańsku* [The Purification of Ballast Waters in the Northern Port in Gdańsk], "Technika i Gospodarka Morska", 1977, No. 2, p. 107; A. SADOWSKI, *Konferencja na temat techniki zwalczania zanieczyszczeń mórz* [Conference on the Techniques of Fighting Against the Pollution of the Seas], "Technika i Gospodarka Morska", 1979, No. 5, p. 312; Sh. ODA, *op. cit.*, p. 215 states that "diesel oil is the most important land-based source". It is estimated that in 1971 1.5 million tons of diesel oil found their way into the sea waters; S. A. MALININ, V. A. MUSIN, *op. cit.*, pp. 50, 55, 57, 59.

²² Comp. M. JARECKI, *op. cit.*, p. 107; *Spalarnia odpadów portowych w Rotterdamie* [The Burning-Plant of Port Wastes in Rotterdam], "Technika i Gospodarka Morska", 1977, No. 9, p. 574; M. I. LAZAREV, *op. cit.*, p. 50; J. ZALESKI, J. JAROSIŃSKI, *Badania nad zanieczyszczeniami Bałtyku przez przemysł* [Studies on the Pollution of Baltic Sea by Industry], "Technika i Gospodarka Morska", 1977, No. 6, p. 375.

for conclusions as to the state of general international law in this field. It is therefore necessary to take into account, in addition, the conventions of universal scope or aspirations; it would also be useful to examine the problem from the point of view of the customary norms, if any, and of the general principles of law, to study the trends which dominate in the internal legislation of states as well as the results of the activities, including the norms and standards worked out by competent international organizations.²³

Among the four Geneva Conventions on the Law of the Sea of 1958, only the Convention on the High Seas deals in two articles with the problem of pollution of the seas. Article 24 concerning pollution by oil mentions their origin, without taking into account the land sources, and this alone would be enough to disqualify it as an attempt at protecting the sea waters against this kind of pollution.²⁴ On the other hand, Article 25, though restricted by Alinea 1 to dumping of radioactive wastes, contains in Alinea 2 a more general formula, which can be interpreted as covering also pollution of the sea waters by radioactive substances and other noxious materials coming from the land.²⁵

Some connection with the problem of pollution of the marine environment by polluting agents of land origin can be seen in the general provision of Article 1 of the Treaty on the partial ban on nuclear tests concluded in 1963, which calls on all states to refrain from exploding

²³ The importance of the problem is emphasized by the regional Conventions dealing with the protection of the marine environment against pollution. Comp. K. WOLFKE, *op. cit.*, p. 89; *Problema...*, pp. 227, 237, 273; S. A. MALININ, V. A. MUSIN, *op. cit.*, pp. 64, 71, 73, 81.

²⁴ In part, this connection can be the result of the fact that account is being taken of oil leaks from pipelines — comp. A. P. KOLODKIN, *op. cit.*, p. 208; R. ZAORSKI, *op. cit.*, p. 174; R. ZAORSKI, *Konwencje genewskie o prawie morza* [The Geneva Conventions on the Law of the Sea], Gdynia 1962, p. 214; A. KOWALSKI, *op. cit.*, pp. 13—14.

²⁵ As rightly pointed out by R. ZAORSKI, *Zagadnienia Ochrony* [Problems of Protection], pp. 179—180, "the term other harmful substances cover also river sewage harmful to organic life". Comp. also R. ZAORSKI, *Konwencje...* [Conventions...], p. 215; A. KOWALSKI, *op. cit.*, p. 13—14; A. OLSZÓWKA, *op. cit.*, p. 88; S. A. MALININ, V. A. MUSIN, *op. cit.*, pp. 63, 64—65; the authors stress that the regulations worked out by the IAEA and by IMCO "not only do not weaken the imperative nature of the provisions of Article 25 of the Convention on the High Seas concerning the prohibition to pollute the sea waters with radio-active waste, but on the contrary strengthen these provisions by defining the technical means by which they can be implemented in practice". As to the struggle for the proper wording of Article 25 at the Geneva Conference of 1958 see R. BIERZANEK, *Morze otwarte ze stanowiska prawa międzynarodowego* [The High Sea from the Point of View of International Law], Warszawa 1960, p. 243—249.

nuclear devices in any place under their jurisdiction and control, including under-water together with their territorial waters as well as in any other environment, if such an explosion results in radioactive fallout affecting an area beyond the boundaries of the territory under the jurisdiction or control of the state carrying out such explosion.²⁶

The majority of multilateral conventions dealing with the protection of sea waters against pollution are concerned with a different object of regulation and, as a rule, show no relation with the problem of protection against land-based pollutions. Exceptional, to some extent, is in this field the Convention of November 11, 1972 dealing with the prevention of pollution of the sea waters by dumping wastes and other materials. The Convention takes into account the fact that "marine pollution originates in many sources, such as [...] rivers, estuaries, outfalls and pipelines" and states that

"Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment [...]"²⁷

Land-based pollution is increasingly taken into account in the work of international organizations and organs.²⁸ Quite explicit is, in this respect, the Draft Convention on the Law of the Sea which formulates the binding obligations of states in the field of prevention, reduction and control of land-based pollution and regulates the problem of implementation of these provisions and measures.²⁹

On a regional level, a similar approach to that of the provisions of the convention dealing with the prevention of pollution by dumping wastes was adopted earlier by the convention on the prevention of pollution of sea waters by dumping wastes from ships and airplanes signed in Oslo February 15, 1972 and covering the North-East Atlantic, with the exclusion of the Baltic Sea and the Belts and the Mediterranean

²⁶ Polish text in: "Journal of Laws", 1963, No. 52, item 288. The connection between the agreement and the problem of pollution of the sea waters by land-based sources is stressed by, among others, S. A. MALININ, V. A. MUSIN, *op. cit.*, pp. 63, 68; A. I. YOIRIS, M. I. LAZAREV, *Dogovor ozdorovlajusčij atmosferu*, Moskva 1963, p. 20.

²⁷ Comp. Alinea 3 of the Preamble and Article I of the Convention. Text in: ILM, 1972, No. 6, p. 129.

²⁸ Especially in the resolutions of the UN General Assembly as well as in the resolutions and other activities of the UNEP, the Committee on the Sea Bed, IMCO and the IAEA. As far as radio-active waste is concerned, of great importance was the Vienna Convention of 1963 on the civil liability for nuclear damage. Comp. S. A. MALININ, V. A. MUSIN, *op. cit.*, p. 80—81.

²⁹ Comp. Articles 208 and 214 ICNT.

Sea.³⁰ There are also several conventions which deal directly, or *inter alia* with the problem of the protection of the marine environment against land-based pollution. One may mention:

— Convention on the Protection of the Marine Environment of the Baltic Sea Area, of March 22, 1974, known as the Helsinki Convention;³¹

— Agreement between Denmark and Sweden on the protection of the Sund Straits against pollution, signed April 5, 1974;³²

— Agreement between Italy and Yugoslavia on cooperation in the field of protection of the waters of the Adriatic Sea and its shores against pollution, signed February 14, 1974;³³

— Convention for the Prevention of Marine Pollution from Land-Based Sources, signed June 4, 1974, known as the Paris Convention;³⁴

— Convention for the Protection of the Mediterranean Sea Against Pollution, signed February 16, 1976, known as the Barcelona Convention;³⁵

— Kuwait Regional Convention for Co-Operation in the Protection of the Marine Environment from Pollution, signed April 24, 1978, known as the Kuwait Convention.³⁶

All these conventions and agreements include annexes to the basic conventions treated as integral parts thereof.³⁷ They try also to make sure, beforehand, that the obligations resulting therefrom will be fulfilled, either by formally prohibiting reservations,³⁸ or by introducing

³⁰ Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircrafts — text in: ILM, No. 2, p. 262 ff. In Alinea 4 of the Preamble it is stated that "this pollution has many sources, including [...] discharges through rivers, estuaries, outfalls and pipelines within national jurisdiction".

³¹ Text in: ILM, 1974, No. 3, p. 546 ff; L. GELBERG, *op. cit.*, p. 139 ff; *Umowy międzynarodowe...* [International Treaties...], p. 314 ff. Poland ratified the Helsinki Convention on November 8, 1979. The Convention entered into force May 3, 1980.

³² Polish text in: *Umowy międzynarodowe...* [International Treaties...], p. 415 ff.

³³ Quoted from B. VUKAS, *Solution définitive de la "Question de Trieste" par la conclusion des accords entre l'Italie et la Yougoslavie à Osimo (Ancona), le 10 Novembre 1975*, AFDI, 1976, p. 93.

³⁴ Text in: ILM, 1972, No. 2, p. 352 ff. As regards the earlier British initiative, see J. ŁOPUSKI, *op. cit.*, pp. 109—110. As regards the ratification of the Convention see M. E. COUSIN, *Les conventions internationales conclues par la France et publiées au Journal Officiel de la République Française en 1976*, AFDI, 1976, p. 846.

³⁵ Text in: ILM, 1976, No. 2, p. 285 ff.

³⁶ Text in: ILM, 1978, No. 3, p. 511 ff. Comp. also Plan of action — *ibid.*, p. 501 ff; Additional Protocol of the prevention of accidental pollution — *ibid.*, p. 526 ff.

³⁷ Comp. Article 20 of the Helsinki Convention. Comp. also A. C. KISS, *op. cit.*, p. 725.

³⁸ For example Article 25, Alineas 1—2 of the Helsinki Convention allows

a special undertaking by states — parties to the conventions to execute all obligations.³⁹

These Conventions do not contradict the idea of a broader and global cooperation on the seas; nor are they a manifestation of a particularism directed against the universality of the international law of the sea. In fact they serve the interest of regional cooperation. This can be seen not only in the provisions concerning the respect of the norms of the law of the sea and in the fact that the provisions and experience of the competent international organizations are fully taken into account, but also in the adoption of the principle of non-interference in a twin aspect: inviolability of the freedom of the sea and of the legitimate ways of using the high seas; the non-increasing of the pollution of the outside sea areas (the "stand-still" model).⁴⁰

From the point of view of their object and objective, these conventions are meant to serve the dynamic concept of environmental protection. They accept as the aim of international cooperation not only the prevention, but also the reduction of the degree of environmental pollution and the enhancement of the quality of the environment,⁴¹ by a strict limitation and gradual elimination of pollution of the sea waters by specific substances and materials mentioned in the annexes.⁴² The dynamic concept is also reflected in the possibility to apply a simplified procedure when amending the list of such substances and materials,⁴³ in the undertaking to cooperate in the promotion of new technologies, methods and means which ensure better environmental protection,⁴⁴

only for the possibility of suspending the application of its Annex, or part of its, or the amendment to it for a maximum period of 1 year.

³⁹ In this way Article, 12 pt. 1 of the Paris Convention.

⁴⁰ Comp. Article 21, Article 2, pt. 1, 19 and Article 3, pt. 2 of the Helsinki Convention; Article 5, pt. 2, 11 *in fine*, Article 1, pt. 1, in connection with Annex A, Part I pt. 4, Article 7 of the Paris Convention, which states *in fine* that the aim is also to prevent the increase in pollution from other than land-based sources.

⁴¹ Comp. Article, 3 pt. 1, Article 6, pt. 1, 2, 6, 7, and 8, Article 11, 13d, and Annex III, pt. 3—6 of the Helsinki Convention; Article 1, pt. 1, Article 4, pt. 1, 2, 4, Article 5, pt. 1, Article 6, pt. 1, 16d, and Annex A of the Paris Convention; Article 4, pt. 1 and Article 8 of the Barcelona Convention; Article VI of the Kuwait Convention. A. C. KISS, *op. cit.*, p. 723 speaks of the "stand-still" rule supplemented by the obligation to reduce pollution.

⁴² Comp. Article 6, pt. 1, 2, 6—8, in connection with Annex III, pt. 3—6 of the Helsinki Convention; Article 4, pt. 1, 2, 4, Article 5, pt. 1 in connection with Annex A, Part I—III of the Paris Convention.

⁴³ Comp. Article 24, pt. 2 of the Helsinki Convention and Article 18 of the Paris Convention.

⁴⁴ Comp. Article 16 in connection with Annex III, pt. 3—4 of the Helsinki Convention; Article 4, pt. 3—5 of the Paris Convention.

in the verification of the adopted programmes and licences to discharges,⁴⁵ in the undertaking to make use of the most modern technical achievements, etc.⁴⁶

The conventions define in precise terms their "treaty area", or the geographical scope of their application.⁴⁷ Thus, the Barcelona Convention and the Kuwait Convention apply to their respective areas "with the exclusion of territorial water";⁴⁸ the Helsinki Convention, while adopting a similar stand, contains an additional obligation whereby the states-parties to the Convention undertake to take the necessary steps in order to make sure that the objectives of the Convention are being implemented in their territorial waters;⁴⁹ the Paris Convention goes further recognizing as the "maritime area" to which it applies

"the high seas, the territorial seas of Contracting Parties and waters on the landward side of the base lines from which the breadth of the territorial sea is measured, extending, in the case of watercourses up to the freshwater limit [...]".⁵⁰

There are differences in the interpretation of the concept of "land based pollution (sources)" (in French "*pollution tellurgique (sources terrestres)*", in Russian "*zagrjaznenie morja v rezultate dejatel'nosti na*

⁴⁵ Pursuant to the Helsinki Convention (Article 6, pt. 3) such a licence "may be periodically reviewed"; a better solution was adopted in the Paris Convention (Article 4, pt. 2) which states that "Such approval shall be periodically reviewed".

⁴⁶ Comp. Article 4, pt. 3 of the Paris Convention, Article 17 in connection with Annex III, pt. 4 of the Helsinki Convention. The Convention on the Sund Straits adopts in Article 2, pt. 3a the principle that the methods of sewage purification must be improved.

⁴⁷ Pursuant to Article 1 of the Helsinki Convention the area of the Baltic Sea comprises the Baltic Sea proper together with the Gulf of Bothnia, the Gulf of Finland and the entry into the Baltic Sea; in the light of Article 2 of the Paris Convention it applies to the same maritime area as the Oslo Convention of 1972, circumscribed by the meridians and parallels indicated in the Convention and covering part of the area of the Atlantic Ocean, the Arctic Sea and the adjacent seas, with the exclusion of the Baltic Sea and the Belts, of the Mediterranean Sea and the adjacent seas; pursuant to Article 1 of the Barcelona Convention it applies to the entire Mediterranean Sea including its gulfs and seas. Comp. Article II of the Kuwait Convention.

⁴⁸ Comp. Article 1 of the Barcelona Convention, Article II of the Kuwait Convention, Article 1 *in fine* of the Helsinki Convention.

⁴⁹ Article 4, Alinea 3. The Convention specifies that this is taking place "without prejudice to their sovereign rights". A similar reservation concerns also the application of the Convention on the territorial sea — comp. Article 4, pt. 2.

⁵⁰ Comp. Article 3a of the Paris Convention. Pursuant to Article 3b, "Freshwater limit — means the place in the water-course where, at low tide and in a period of low freshwater flow, there is an appreciable increase in salinity due to the presence of sea-water". Pursuant to Article 16c, this limit can be determined by a decision of the Commission.

suše (iz bregovych istočnikov)".⁵¹ And while the Helsinki Convention defines it as "pollution of the sea caused by discharges from land and reaching the sea waterborne, airborne or directly from the coast, including outfalls from pipelines",⁵² the Paris Convention speaks of

"the introduction by men, directly or indirectly, of substances or energy into the marine environment (including estuaries) resulting in such deleterious effects as hazards to human health, harm to living resources and to marine eco-systems, damage to amenities or interference with the legitimate uses of the sea"

and adds that

"pollution from land-based sources — means the pollution of the maritime area i) through watercourses, ii) from the coast, including introduction through under-water or other pipelines, iii) from man-made structures placed under the jurisdiction of a Contracting Party within the limits of the area to which the present Convention applies".⁵³

Thus, the convention does not apply to pollution "from and through the atmosphere", while applying to pollution resulting from activities on the sea-bed, which in other Conventions are individualised as a specific kind of maritime pollution.

In order to achieve the aims of the conventions the contracting parties pledge themselves to take "all possible (appropriate) steps to prevent pollution of the sea".⁵⁴ The Barcelona and Kuwait Conventions go no further, leaving it to the future additional protocols which are to be drafted in cooperation with UNEP, to work out appropriate methods, standards and measures.⁵⁵

It seems that the concept of "measures" or "steps" covers, above all, internal measures taken unilaterally by the various parties, for whenever joint action is at stake the conventions are specific, or state simply that the parties concerned must cooperate.⁵⁶ The preponderance of unilateral measures is quite understandable when one considers that the conventions deal with matters traditionally reserved for the ex-

⁵¹ Comp. Law of the Sea. List of Terms Relating to the Law of the Sea. ST/CS/Ser.F/297/Rev. 1, pp. 89, 90.

⁵² Article 2, Alinea 2 of the Helsinki Convention. Comp. Preamble to the Helsinki Convention p. 4, Article 8 of the Barcelona Convention, Article VI of the Kuwait Convention.

⁵³ Article 1 in connection with Article 3c of the Paris Convention.

⁵⁴ Comp. Article 6, pt. 1 of the Helsinki Convention, Article 1, pt. 1 of the Paris Convention, Article 4, pt. 1 and Article 8 of the Barcelona Convention and Article VI of the Kuwait Convention.

⁵⁵ For a broader discussion of the problem see A. C. KISS, *op. cit.*, p. 737. Comp. also Kuwait Action Plan, pt. 24.5 — text in: ILM, 1978, No. 3, p. 509.

⁵⁶ Comp. below p. 170.

clusive competence of each state. Nor should one forget, that the unilateral nature of these measures concerns only the process of application or implementation, while they themselves are minutely or generally defined by the provisions of the relevant conventions, in the annexes attached to them, or result from joint agreements arrived at in the course of implementation, for example from the decisions taken by the organs set up under the conventions.

The contracting parties cannot decide arbitrarily on the choice of the applied measures, for the conventions themselves provide for the obligation to apply measures, formulated either in a general manner or as concerning some aspects of implementation.⁵⁷ The more specific measures contained in the conventions, their annexes or decisions of the conventional organs introduce sometimes "minimum standards", thus preventing states from applying less effective means.⁵⁸ On the other hand, the "internationalization" of such internal measures is reflected in the obligation by states to report on the measures taken in order to implement the conventions.⁵⁹

One of the specific measures mentioned in the Conventions and their annexes is either the prohibition to discharge some particularly noxious or dangerous substances (the so-called black list)⁶⁰ or the strict limitation or reduction to a minimum of the discharge of other noxious substances and materials (the so-called grey list);⁶¹ in the latter case a discharge at all, or a discharge "in significant quantities" requires prior notification and accord of the competent authorities.⁶² In this respect the Paris Convention goes much further, since it includes a much larger catalogue of prohibited substances in the "black list" and provides also for the necessity of prior accord for the discharge of any quantity

⁵⁷ Comp. Article 3, pt. 1 of the Helsinki Convention, Article 12, pt. 1 of the Paris Convention.

⁵⁸ This does not preclude the application of more far reaching measures, as stated clearly in Article 8 of the Paris Convention.

⁵⁹ The Helsinki Convention formulates such an obligation as regards discharges of considerable amounts of substances and materials listed in Annex II. Article 12, pt. 2 of the Paris Convention provides for a general obligation of inform the Commission on the measures taken by the states and — pursuant to Article 17 — on the results of the surveys carried out individually or jointly.

⁶⁰ Comp. Article 5 in connection with Annex I and Article 6, pt. 6 in connection with Annex III of the Helsinki Convention; Article 4, pt. 1 a in connection with Annex A, Part I of the Paris Convention.

⁶¹ Comp. Article 6, pt. 2—5 in connection with Annex II of the Helsinki Convention; Article 4, pt. 1b, 2b and 3—4, in connection with Article 5, pt. 1—2 and Annex A, Part II and III of the Paris Convention.

⁶² Comp. Article 6, pt. 2 of the Helsinki Convention; Article 4, pt. 2b of the Paris Convention.

of noxious substances and not only of "significant quantities" as set forth in the Helsinki Convention.

An important complement to the provisions of Article 6 of the Helsinki Convention concerning the protection against land-based pollutions is Annex III. It specifies what measures are to be taken in order to achieve the aims of the Convention to prevent pollution by communal and industrial sewage, industrial wastes, and cooling water.⁶³ On the other hand, the Paris Convention contains special provisions concerning radioactive materials.⁶⁴

So far, no attention has been paid to a danger for the achievement of the aims of the Helsinki Conference originating from Annex III. Dangerous substances which according to the Helsinki Convention, are to be eliminated from the area of the Baltic Sea must not be — pursuant to Annex III — discharged in the sea only "in significant quantities".⁶⁵ It may be mentioned that the Paris Convention not only refused to weaken the prohibition concerning dangerous substances, but strengthened the area of prohibition of noxious and radio-active materials, not only by limiting strictly their discharge but also by reducing or eliminating, as appropriate, such discharges altogether.⁶⁶ The Paris Convention formulated also the obligation to adopt provisions and norms concerning the quality of the environment also as regards "discharges into watercourses which affect the maritime area" and obligates the contracting parties "to take into account the latest technical developments".⁶⁷

⁶³ Comp. Annex III, pt. 1—5 of the Helsinki Convention. Of particular value is the provision of pt. 5, according to which "the discharge of cooling water from nuclear plants or other kinds of industries using large amounts of water shall be effected in a way which minimizes the pollution of the marine environment of the Baltic Sea Area".

⁶⁴ Comp. Article 5, pt. 1—2, in connection with Annex A Part III of the Paris Convention. It may be recalled that the Helsinki Convention takes care of radio-active materials within the frame of the so-called grey list — comp. Annex II of the Helsinki Convention.

⁶⁵ Comp. Annex III, pt. 2 *in fine* of the Helsinki Convention. The praise heaped on the Convention because of the prohibition of dangerous substances must be considered as premature and exaggerated — comp. among others, M. ZELAZKO, *Konwencja helsińska o ochronie środowiska obszaru Morza Bałtyckiego* [*The Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area*], "Technika i Gospodarka Morska", 1974, No. 7—8, p. 409; L. GELBERG, *op. cit.*, p. 89.

⁶⁶ Comp. Article 4, pt. 1b of the Paris Convention.

⁶⁷ Comp. Article 4, pt. 3 of the Paris Convention. Comp. also Directive of the Council of the European Communities of May 4, 1976 on pollution caused by dangerous substances discharged to "the aquatic environment of the Community" — text in: ILM, 1976, No. 5, p. 1113 ff; Convention on the Protection of

Both the Helsinki and Paris Conventions expect that, on top of the application of unilateral measures or of the facultative choice of individual or joint steps, all contracting parties or some of them will take joint action in certain specific situations.⁶⁸ As far as rivers are concerned, the Helsinki Convention obligates the riparian states to take joint action in order to prevent harmful discharges into international rivers.⁶⁹ The Paris Convention imposes on the contracting states the obligation

“to cooperate with the non-Contracting State so as to make possible the full application of the present Convention”

in order to prevent situations whereby a contracting party would be unable to ensure the application of the Convention

“as a result of pollution having its origin in the territory of the non-Contracting State”.⁷⁰

The Paris Convention provides also for the obligation to consult and to conclude appropriate agreements whenever pollutions occur having their origin in the territory of one of the contracting states and not covered by the Convention, but involve substances which

“are likely to prejudice the interests of one or more of the other Parties to the Convention”.⁷¹

The conventions obligate the states to cooperate in order to fight against maritime pollution. The Helsinki Convention is particularly explicit in this respect.⁷² In the Paris Convention the contracting states pledge themselves to assist each other and to exchange information so as to prevent accidental sea water pollution and to remove the effects of such accidents.⁷³

the Rhine Against Chemical Pollution of December 3, 1976 (Preamble p. 2 and 7) — text in: ILM, 1977, No. 1, p. 242 ff.

⁶⁸ Comp. Article 3 pt. 1, 6, pt. 2 of the Helsinki Convention; Article 1, pt. 2, Article 4, pt. 2, Article 11 of the Paris Convention.

⁶⁹ Comp. Article 6, pt. 7 of the Helsinki Convention.

⁷⁰ Comp. Article 14, pt. 1—2, in connection with Article 4, pt. 3 of the Paris Convention.

⁷¹ Comp. Article 9, pt. 1—4 of the Paris Convention. Pursuant to Article 3, pt. 1 of the Barcelona Convention “The Contracting Parties may enter into bilateral or multilateral agreements, including regional or subregional agreements, for the protection of the marine environment of the Mediterranean Sea against pollution, provided that such agreements are consistent with this Convention and conform to international law”.

⁷² Article 11 in connection with Annex VI of the Helsinki Convention. Comp. also A. F. VYSOTSKIJ, *op. cit.*, p. 134; A. C. KISS, *op. cit.*, p. 727, who considers this element to be an “original feature” of the Helsinki Convention.

⁷³ Comp. Article 13 of the Paris Convention.

The two conventions⁷⁴ include far reaching provisions concerning scientific and technological cooperation, including the development of research, exchange of data and information, participation in programmes aimed at developing ways and means to evaluate the degree of pollution, to adopt preventive measures, to work out alternative methods of purification, neutralization and recycling of sewage, removal of noxious substances, etc. The Paris Convention provides, furthermore, that the parties

“agree to set up progressively, and to operate [...] within the area covered by the present Convention, a permanent monitoring system” and “to lay down the ways and means of pursuing individually or jointly systematic or *ad hoc* monitoring programmes”.⁷⁵

An important instrument in the implementation of the Conventions are the joint organs, which are either fully autonomous, like the Commission on the Protection of the Marine Environment of the Baltic Sea and the Commission set up under the Paris Convention, or emanate from another international organ, like the Secretariat set up under the Barcelona Convention.⁷⁶ A specific feature of the Kuwait Convention is the establishment of a Regional Organization for the Protection of the Marine Environment, with its own Council and Secretariat.⁷⁷

The reviewed conventions contain no specific provisions concerning responsibility. This “reluctance” to deal with the problem can be explained, in part, by the prevailing tendency to concentrate all efforts on the so-called positive responsibility, i.e. on the obligations to prevent and to reduce the pollution of the marine environment; it reflects also some still prevailing doubts and differences of approach to the problem of the nature and limits of responsibility, recognized in principle, for damages caused to the marine environment.⁷⁸

⁷⁴ Comp. Article 16 of the Helsinki Convention; Article 10 of the Paris Convention.

⁷⁵ Comp. Article 11 of the Paris Convention.

⁷⁶ Comp. Article 12 of the Helsinki Convention, Article 15 of the Paris Convention, Article 13 of the Barcelona Convention. Article 14 of the Barcelona Convention provides for periodical meetings of the contracting parties.

⁷⁷ Comp. Article XVI of the Kuwait Convention.

⁷⁸ Sh. ODA, *op. cit.*, p. 137—138, 209—210, discussing the resolution of the UN General Assembly 2995/XXVII, dealing with international cooperation in the field of environment and adopted December 15, 1972 states that the resolution interprets the principle of international law which “has developed through customary practice”. As to the controversy over responsibility at the III Conference on the Law of the Sea, comp. T. TREVES, *Les tendances récentes du droit conventionnel de la responsabilité et le nouveau droit de la mer*, AFDI, 1975, p. 772 ff; Z. KALINOWSKI, *op. cit.*, p. 342; M. A. GICU, *Voprosy meždunarodnoprovovoi*

The Helsinki Convention restricts itself to a provision which is of the nature of a *pactum de contrahendo*, obligating the contracting states to work out and introduce as quickly as possible "rules concerning responsibility for damage resulting from acts or omissions in contravention of the present Convention, including, *inter alia*, limits of responsibility, criteria and procedures for the determination of liability and available remedies".⁷⁹

The Paris Convention contains no provision concerning directly the problem of responsibility. On the other hand, there is an indirect reference to the problem of responsibility of persons in the provision by which the contracting states pledge themselves "to take in their territory appropriate measures to prevent and punish conduct in contravention of the provisions of the present Convention".⁸⁰ It would, however, be erroneous to criticize the Paris Convention for its silence or vagueness on that score. For, it must be remembered (I) that in the area of the North-East Atlantic there are also other conventions regulating the problem of responsibility, (II) that the West-European countries emphasize strongly the obligations in the field of prevention and give preference to the problem of responsibility of persons and not of states, (III) that the principle of responsibility is not questioned neither in science nor in the actual practice of these states, (IV) that as far as the crucial problem of responsibility of persons for so-called trans-frontier damage is concerned, specific substantive norms and rules of procedure were worked out within the framework of international organizations such as the OECD and the EEC, including the so-called Community Law, and have already been in force or agreed upon.⁸¹ The

otvetstvennosti v oblasti ratsionalnogo ispolzovaniya morkoi sredy i ee resursov, in: *Meždunarodnopravovye...*, pp. 105—106.

⁷⁹ Comp. Article 17 of the Helsinki Convention. Similar, though more general provisions are contained in Article 12 of the Barcelona Convention. For a broader discussion of the subject see: L. GELBERG, *op. cit.*, p. 92; W. RADECKI, *op. cit.*, p. 89; A. C. KISS, *op. cit.*, p. 726—727.

⁸⁰ Comp. Article 12, pt. 1 of the Paris Convention. The subject is studied broader by J. F. LACHAUME, *Jurisprudence française relative au droit international* (Année 1975), AFDI, 1976, pp. 927—928; J. P. QUENEUDEC, *Chronique du droit de la mer*, AFDI, 1977, pp. 742—743. Comp. paragraphs 6—9 (civil responsibility) and paragraphs 18—29 (penal responsibility) of the Canadian law of 1970.

⁸¹ For example, in the case of pollution caused by the Italian Company Montedison the French minister of the environment, replying to an interpellation in the parliament pointed at the competence of the community regulations applying to the industry producing titanium oxide. Comp. J. CHARPENTIER, *Pratique française de droit international* 1976, AFDI, 1976, pp. 986—987. Extensive work has been done, among others, by the Council of Europe, the EEC and the OECD. Comp. for example, Recommendation of the OECD Council on Equal Right of

problem of responsibility for damages to the marine environment resulting from activities on the land is part of the broader problem of responsibility for the harmful effects of so-called trans-frontier pollution.

There are various solutions of the question of participation of states in the conventions and of the membership of the organs set up under the conventions. All reviewed conventions recognize the right of the coastal states of the conventional region to participation; in fact, their participation had been ensured at the preparatory stage and at the negotiating stage leading to the signing of the conventions. As far as other states are concerned, the Helsinki Convention provides for the possibility of a state joining the convention

“provided that this State is invited by all the Contracting Parties”.⁸²

On the other hand, the Paris Convention recognizes the unconditional right to join by the signatory states of the Oslo Convention of 1972 (which covers an identical area), and what is of greater importance, by

“any State [...] located upstream on watercourse crossing the territory of one or more Contracting Parties to the present Convention and reaching the maritime area”.⁸³

Other third states are allowed to join at the invitation of the parties to the Convention. This solution, which is in conformity with the obligation to cooperate with the state located upstream on watercourse, cannot be considered as discriminatory against third states; on the contrary, it is in line with the present tendency to include within the scope of conventions aiming at protecting the marine environment against pollution all states of the same drainage basin.⁸⁴ It is to be regretted that a similar solution had not been adopted by the Helsinki Convention. This would have promoted cooperation with Czechoslovakia, whose part in polluting the marine environment of the Baltic Sea is far from negligible.

The Paris Convention provides for the participation of the EEC, and the Barcelona Convention — for the participation of the EEC and also of such other regional economic groupings whose membership

Access in Relation to Transfrontier Pollution (May 11, 1976) — text in: ILM, 1976, No. 5, p. 1218 ff.; OECD Guiding Principles Concerning International Economic Aspects of Environmental Policies, May 26, 1972 — text in: ILM, 1972, No. 5, p. 1172 ff.

⁸² Comp. Article 26, pt. 1 of the Helsinki Convention.

⁸³ Comp. Article 24, pt. 3 of the Paris Convention. It may be mentioned that Switzerland, as a land-locked country situated on the upper course of the Rhine participated from the very outset in the work of the Paris Conference.

⁸⁴ It is hard to agree with M. ŻELAZKO, *op. cit.*, p. 410, who claims that “this provision [Article 26, Alinea 1 of the Helsinki Convention — note T. J.]

includes at least one Mediterranean state.⁸⁵ This solution must also be recognized as modern and practical, taking into account the growing role of regional economic organizations, of those in particular which aim at achieving economic integration, their increasing interest and authority as regards problems of environmental protection, their activities in this respect, etc.⁸⁶ By accepting the participation of all states of the same drainage basin and of all regional organizations acting in the area, the Paris Convention follows the trend which marks the work on the "international river law" and tends to extend international cooperation so as to cover all states of the international basin.⁸⁷ It is also in harmony with the stated above principle of creating a system of comprehensive conventions and other means serving the interests of environmental protection of mankind as a whole, in contrast to isolated attempts to deal with separate elements of the human environment.

In this connection it would seem justified to argue that the Council for Mutual Economic Assistance should be allowed to join the Helsinki Convention, owing its valuable experience in the field of the elaboration of methods and standards of environmental protection.⁸⁸ This could, of course, encourage the EEC, or eventually also the Nordic Council, to ask for participation in the Convention. And no harm could result from that. Already certain rules worked out by these organizations, and in particular the Community Laws of the EEC, are being applied by the Baltic states of the EEC. The Baltic Sea could thus become a valuable testing ground for cooperation in the field of environmental protection between the major European economic groupings; the exchange of

is essential from the point of view of Polish economic interests and environmental protection, because of the possibility of Czechoslovakia, whose territory is situated in the drainage area of the Baltic Sea, joining the Convention". As must be pointed out, nothing in the Convention encourages Czechoslovakia to join, on the contrary, it places Czechoslovakia in the unenviable position of a country which must be invited to join by all other Contracting-States.

⁸⁵ Comp. Article 22 of the Paris Convention, Article 24 of the Barcelona Convention. As regards the question of participation in the vote, comp. Article 19 of the Paris Convention and Article 19 of the Barcelona Convention.

⁸⁶ According to A. C. KISS, *op. cit.*, pp. 741—742, the EEC has an important part to play in the implementation of the Paris and Barcelona Conventions. In acceding to these Conventions the EEC confirmed its undeniable authority in the field of environmental protection.

⁸⁷ For example, Article I of the so-called Helsinki Rules, adopted by the ILA in 1966. Comp. Report of the 52nd Session of the International Law Association held at Helsinki, 1966.

⁸⁸ For a broader discussion of the subject see, among others, J. SYMONIDES, *Europejska współpraca w zakresie ochrony środowiska naturalnego* [European

experience and adoption of jointly worked out standards could lead to all-European solutions.

Already at present there are certain problems of coordination as regards the protection of the marine environment of the specific European sea areas, if only for the fact that some European countries and organizations participate at the same time in the Paris and Helsinki Conventions, or in the Paris and Barcelona Conventions.⁸⁹ The importance and scope of these problems would become even greater in the case of the proposed conclusion of a regional convention concerning the protection of the Black Sea against pollution.⁹⁰

In this connection it may be recalled that in the light of the Final Act of the Conference on Security and Cooperation in Europe, cooperation in the field of environmental protection is one of the areas of expected all-European joint action. The Final Act adopted at the Helsinki Conference states explicitly that one of the aims of all-European cooperation in the field of environmental protection is the "protection of the marine environment", including protection

"from pollutants emanating from land-based sources [...], notably the harmful substances listed in Annexes I and II to the London Convention on the Prevention of Marine Pollution by the Dumping of Wastes and Other Matters".⁹¹

The relatively high degree of common interests of the European states in the field of protection of the marine environment; the existence of regional conventions and the experience gathered in the course of their implementation; the participation of European States in such organizations as IMCO, IAEA, UNEP, etc., the application of standards worked out by these and other organizations; the positive experience gained in this sphere by the UN Economic Commission for Europe; all this militates in favour of giving careful consideration to all-European cooperation on the protection of the marine environment, coordinated with the gradually consolidating elements of all-European cooperation on inland, waterways. Such cooperation would, at the beginning include, among other things, the exchange of experience and information of a

Cooperation in the Field of Environmental Protection], "Przegląd Zachodni", 1972, No. 5—6, pp. 3—5; I. RUMMEL-BULSKA, *Rozwój współpracy europejskiej w dziedzinie ochrony środowiska* [*The Development of European Cooperation in the Field of Environmental Protection*], "Przegląd Stosunków Międzynarodowych", 1980, No. 5, p. 78; V. A. PROKUDIN, in: *Problema...*, p. 222 ff.

⁸⁹ A. C. Kiss draws the attention to this problem — comp. A. C. KISS, *op. cit.*, p. 742.

⁹⁰ Comp. A. F. VYSOTSKIJ, *op. cit.*, p. 136 ff.

⁹¹ Comp. Conference on Security and Cooperation in Europe. Final Act, Helsinki 1975, Part II.5: The Environment. The Aims of Cooperation, p. 103.

scientific and technological nature, the improvement and extension of observation and warning systems against pollution, a gradual unification of norms and standards and harmonization of national policies, using more effectively than hitherto all tested channels of cooperation within the framework of the UN Economic Commission for Europe and of its auxiliary organs.

International Organization as Parties to Treaties

by RENATA SONNENFELD

I. The International Personality of International Organizations as the Basis of Their Treaty-Making Capacity

After many years of hesitations and controversions, the viewpoint generally accepting the international personality of international organizations has become preponderant in the doctrine of international law¹

At the time when scholars discussed the legal status of international organizations, the states themselves seemed either not to notice that the bodies created by them were growing more and more independent, or not to attribute to this process great significance. Even the first international agreement concluded by an international organization — the *modus vivendi* between the League of Nations and Switzerland went unnoticed, though Switzerland recognized *expressis verbis* in this agreement the international personality of the League of Nations.² However, twenty years later, during the San Francisco debates of the founding states of the United Nations, the majority of states rejected a motion that a clear regulation be inserted into the constituent instrument, stating the international personality of this new organization. But already in 1948 the UN member-states accepted, again without a protest, the advisory opinion of the International Court of Justice in the case concerning "Reparations for Injuries Suffered in the Service of the United Nations", in which the Court held that the United Nations was a subject of international law and was capable of possessing international rights and duties. One may suppose that this ICJ opinion was contributed to the growing participation of international organizations in international legal relations or, in any case, determined the views voiced in

¹ The term "organization" used in this text refers to "international inter-governmental organizations" exclusively.

² The Provisional *modus vivendi* of 1921 on privileges and immunities of the League of Nations and the *modus vivendi* of 1926 (cited in UN Doc. ST/LEG/Ser. B/11, 1961, p. 137).

the literature. The number of scholars questioning the international personality of international organizations' or even denying that they are subjects of international law, has become less and less numerous. It is worth mentioning that the adaptation of their viewpoint to the changing situation proved to be most difficult for those who considered the concept of "legal personality" to be synonymous with that of "sovereignty". Thus, for instance, the Polish scholar, Ludwik Ehrlich, wrote: "From the point of view of the Law of Nations, sovereignty may be regarded as synonymous with being a subject of the Law of Nations, that is, with the quality of being a member of the international community",³ and stated consequently: "The definition of the Law of Nations implies that the United Nations, international fluvial commissions, etc., not being states, are not subjects of the Law of Nations."⁴

In the meantime, however, organizations exercised such specific rights as *ius contrahendi* and *ius legationis* which were regarded as rights pertaining exclusively to subjects of international law, i.e. to states, according to the viewpoint still prevalent in the 40ties. So this new phenomenon required an explication. Many authors concentrated their attention on the exercise of these rights as the starting point of their considerations.

The participation of international organizations in international legal relations, and especially in international treaties, has been recognized as a proof that they are subjects of international law (or have international personality). In some cases, however, this reasoning appears to be illogical, for instance, when the international personality of organizations is deduced from their juridical acts and then the right to perform such acts is justified by their international personality. The following reasoning may serve as an example: "Thus we arrive at the conclusion that international organizations may possess international personality. It is bestowed upon them either explicitly, which is relatively rare, or by their constitutions empowering them to perform international juridical acts, which indicates that they are subjects of international law", says K. Zemanek,⁵ and then adds: "The competence to

³ L. EHRLICH, *Prawo Narodów* [The Law of Nations], Kraków 1948, p. 104.

⁴ *Ibid.*, p. 95; the evolution of Soviet doctrine in this respect and its individual trends were presented and analyzed by St. E. NAHLIK, *Podmiotowość organizacji międzynarodowych w świetle nauki radzieckiej* [International Organizations as Subjects of International Law in the Light of Soviet Doctrine], "Państwo i Prawo", 1976, No. 10.

⁵ K. ZEMANEK, *Das Vertragsrecht der Internationalen Organisationen*, Wien 1957, p. 26; to the inadmissibility of such reasoning attention is drawn by A. BROCHES: "to use my conclusion that the Bank possesses international

deal with a specific matter ensues from the constitution of an organization. If a given organization is an active subject of international law, it may also exercise such a competence in the form of an international treaty".⁶

Besides, such a reasoning may lead to a dangerous conclusions, namely, that the treaty-making capacity of an organization in one domain could be in this way extended to another domain or even made general. In other words: it may be argued on the basis of the statutory treaty-making competence of an organization concerning its headquarters that this organization possesses international personality, and then recognize this personality as the basis of competence to conclude, for instance, co-operation agreements.

Another group of scholars uses the concepts of "international personality" and "subject of international law" alternately,⁷ which — in turn — is criticized by authors who, desiring to stress the difference between international organizations and classic subjects of international law (states), reserve the term "international personality" for states.⁸ Sometimes, however, a contrary viewpoint is voiced: international organizations are defined as "international persons" and states — as "subjects of international law".⁹

There is no doubt that states are different international persons and subjects of international law than international organizations. This is generally accepted by the doctrine of international law, since it is evident that neither sovereignty, population, nor territory are attributable to the international personality of international organizations. Also different is the scope of their rights and duties. This, however, does not exclude an organization from acquiring international personality and, in consequence, becoming a subject of international law, though its functions are carried out within the limits of rights and duties as defined by the states members of this organization. The legal personality of any organization is undoubtedly secondary and dependent on the will of the founding states. In my opinion, to explain the legal nature

personality as proof that the Bank possesses treaty-making capacity would seem like using a definition to prove the presence of one of the elements of the defined term..." (*International Legal Aspects of the Operations of the World Bank*), RCADI, vol. 98, 1959, part III (1960), p. 329.

⁶ K. ZEMANEK, *op. cit.*, p. 47.

⁷ For instance, A. BROCHES, *op. cit.*, p. 317.

⁸ For instance, H. LATKIEWICZ, *Zagadnienia podmiotowości prawnomiędzynarodowej EWG* [*Problems Concerning the EEC as a Subject of International Law*], Warszawa 1979, p. 17.

⁹ For instance, F. von der HEYDTE, *Rechtssubjekt und Rechtsperson im Völkerrecht*, in: *Grundprobleme des Internationalen Rechts*, Bonn 1957, p. 237.

of international organizations a comparison with the rules of civil law applying to legal persons might be helpful. In essence, the criteria of their legal personality do not basically differ from those determining a legal person in any national law, on the understanding that in the case of international organizations these criteria are related to the field of international law.¹⁰ These are: (1) political, economic or social aims of an organization, (2) membership — universal or regional subjects of international law, (3) functional independence which permits the organization to act externally as a permanent and separate entity represented by its organ (organs) established by a constituent act, (4) an international treaty as its constituent instrument, and possibly, (5) separate material means.¹¹

Such are the criteria that indicate the possession of international personality by a given organization even if its constituent instrument does not state it explicitly. And conversely, if the statute of a corporate entity endows it with international personality, the lack of even one of the above-mentioned criteria will preclude this entity from attributing to itself international personality.

The above considerations also show that the concept of "limited personality" is based on a wrong reasoning. International personality is a legal category which a corporate entity possesses or does not possess. It is the rights and duties that are functionally limited and show — owing to differing functions of individual international organizations — considerable differences.¹² (A similar mistake is often made with res-

¹⁰ Similarly I. SEIDL-HOHENVELDERN, *Das Recht der Internationalen Organisationen einschliesslich der supranationalen Gemeinschaften*, Köln—Berlin 1967, p. 34. ([...] In fact, the formation of international organization and their endowment with international personality constitutes a rather accurate parallel to the establishment of juridical persons in national laws).

¹¹ E. T. USENKO lists the following attributes of an international organization as indications of its international personality: the organization is set up and functions on the basis of an interstate treaty; its membership consists of the states themselves; it has its own will; it has bodies which form and express its will; it should be lawful; it promotes or organizes cooperation of the states in their exercise of their sovereign rights. (*Sovet Ekonomičeskoj Vzaïmopomošči kak predmet meždunarodnogo prava*, "Sovetskij Ežegodnik Meždunarodnogo Prava 1979", Moskva 1980, p. 42; the present author took knowledge of Prof. Usenko's article only after submitting her paper to the Editor). I. SEIDL-HOHENVELDERN enumerates seven criteria, i.e.: the entity must be basically of permanent nature, its aims must be permissible by international law, the member States of the organization must possess a will of its own, which need not necessarily correspond with the will of each member), *op. cit.*, p. 4.

¹² Similarly A. BROCHES, *op. cit.*, p. 320.

pect to the concept of state sovereignty when instead of "limitation of rights and duties" the term "limitation of sovereignty" is used.).

It should be stressed that in practice states have never questioned the international personality of any international organization possessing the above-mentioned features. Thus, one may consider that a customary rule has been developed, which recognizes the international personality of such organizations. In practice, of course, various institutions may emerge which are not easily definable. However, it is worthy of notice how easily the international community has accepted the international personality of such organizations as the NATO or the Warsaw Treaty Organization, or even of the GATT, whose constituent instruments may arouse doubts about whether the founding states actually intended to establish them as legal persons.

In turn, the status of international organizations as international persons and participants in legal relations makes them subjects of international law. For any legal person possesses, as such, legal capacity and a capacity to perform legal acts.¹³ But the legal capacity of international organizations, as distinct from that of states, is limited either by explicit regulations of their statutes or, in their absence, by their statutory tasks and purposes.

Therefore the existence of legal relations with an international organization is not a proof in itself that it is a subject of international law, but an indication only that its position has been recognized by a third state (i.e. a non-member-state) or by another international organization. In other words: the possession of legal personality presupposes the treaty-making capacity of the organization. And the fact that in practice international organizations often conclude international agreements before the question of their legal personality has been even posed has no bearing on this issue. The conclusion of an agreement presupposes the existence of the international personality of each party and constitutes simultaneously a tacit recognition of such personality. According to M. Paszkowski, the assertion that "a given organization may conclude international treaties facilitates the answer to the question of whether it has an international personality, since treaty-making capacity always speaks for the existence of such a personality".¹⁴

¹³ H. Lauterpacht stated: "Wide recognition has been given to the legal capacity of international organizations as bodies entitled to acquire rights and discharge obligations under both International and Municipal Law", L. OPPENHEIM-H. LAUTERPACHT, *International Law. A Treatise*, 1962, ed. 8, p. 378.

¹⁴ Cf. M. PASZKOWSKI, *Źródła zdolności traktatowej ONZ* [*The Sources of the UN Treaty-Making Capacity*], "Państwo i Prawo", No. 11, p. 803 (" [...] the fact that an organization possesses international personality admits only of presumption that it may conclude international treaties").

At this point a reservation should be made: the possession of international personality by a given organization does not necessarily pre-judge the question of its competence to conclude treaties. In the opinion of the present writer one should differentiate between capacity to conclude treaties which originates from the legal personality of the organization but is only potential, and the factual competence of a given organization, which is determined by the rules of the organization (and in the meaning of potential capacity and factual competence these terms will be applied in the present paper, unless they are part of a quotation).¹⁵ What, then, is indicative of the actual competence of an organization to conclude treaties if the scope of the legal capacity of particular organizations to acquire rights and duties differs? In my opinion, the material scope of treaty-making capacity should be determined separately for each organization on the basis of its statutory rules, and if its constituent instrument does not answer the question, it is the general principles of interpretation and customary rules that should be applied.

II. The Sources of Treaty-Making Capacity

If, then, we may assume that international organizations possess, as legal persons, a potential capacity to conclude legal transactions, the need arises to define their competence to conclude international treaties. The basic source of such competence, as of any decision-making competence of the organs of international organizations, is embodied in their constituent charters with possible annexes and protocols. The statutory provisions referring to treaty-making competence may be divided into three categories: (1) general powers, (2) powers to conclude treaties concerning specific domains, and (3) powers to conclude a specific treaty.

As yet, only few statutes envisage the application of general powers. It is understandable, since in such a case an international organization is endowed with the competence to conclude treaties covering the whole range of its statutory aims. For instance, such powers have been grant-

¹⁵ It seems that a similar view was represented by G. Fitzmaurice; see article 2 of the draft convention on the law of treaties of 1959, in which he defines an international agreement as an understanding concluded between "entities both or all of which are subjects of international law possessed of international personality and treaty-making capacity", ILC YB 1959, p. 26. The present writer is, however, aware — of the fact that in the legal literature both terms are applied alternatively, as well as "power" and "authority".

ed by Article 5 of the Convention establishing the Organization for Economic Cooperation and Development (OECD), which reads:

"In order to achieve its aims, the Organization may [...] enter into agreements with Members, non-member States and international organizations".

Additionally, the Supplementary Protocol to the Convention on the legal capacity, privileges and immunities of the Organization states as follows: "The Organization possesses legal personality. It has treaty-making capacity [...]".

Thus the text of the OECD constituent instrument expressly confirms the treaty-making capacity of the Organization and endows it with the competence for concluding international agreements within the full range of its statutory aims. Similar provisions are contained in the 1973 Treaty establishing the Caribbean Community and the Caribbean Common Market (Article 20).

Relatively wide competence, not limited by specific conditions, was accorded to the Council for Mutual Economic Aid (CMEA) after its Statute had been amended in 1974. Article III authorizes the Council to conclude agreements with member-states, non-member-states and international organizations.

There are, however, statutes whose provisions in this respect are not so clear and therefore their interpretation may be varying. The Treaty establishing the European Coal and Steel Community states that "In international relations the Community shall enjoy the legal capacity it requires to perform its functions and attain its objectives", but it is silent on the question of the Community's competence to conclude agreements. The text itself may be interpreted twofold: it may be argued that the concept of "legal capacity" also embraces treaty-making capacity or that the competence to conclude agreements ensues indirectly from the provisions of Articles 93—95 concerning the ECSC co-operation with other international organizations. But in the light of this text also a restrictive interpretation is admissible, since it may be argued that the ECSC Treaty lacks any explicit competence provision (co-operation with other international organizations need not be based on international agreements), and that legal capacity accorded the ECSC does not necessarily refer to concluding international agreements.

General powers, though equally little precise, are embodied in the Agreement establishing the International Bank for Reconstruction and Development (IBRD). Its Article VII reads:

"The Bank shall possess full juridical personality, and, in particular, the capacity to (1) contract [...]"

The provision stipulating the Bank's competence is included in Article IV which establishes the terms of "loan contracts" with the IBRD member-states. However, the Agreement leaves open the question to which legal system these contracts shall belong. J. Makarczyk, after a detailed analysis of the Bank's activities, stated: "In this light, the conclusion of A. Broches, according to which the Bank's contracts were to be and are fully governed by international law, seems to be not very convincing [...]. His exposition leaves out [...] the fact that the Bank considers itself released from international law when this is justified by the interests of its governors [...]"¹⁶ It should be added, however, that — as a rule — the Bank contracts are regarded in the literature as international agreements.¹⁷

The intentions of the authors of the International Labour Organization (ILO) Constitution are also rather vague. Although Article 39 of the Constitution is almost identical with the above-quoted Article XII of the IBRD Agreement, its remaining articles do not contain provisions explicitly authorizing the ILO to conclude any international agreement whatever.

It may be interesting to compare the above-cited statutory regulations with the actual practice of the respective organizations. According to the data published by the UN Treaty Series till 1965, the OECD concluded one agreement with another organization and one association agreement with a state, the IBRD — 450 contracts with states and 5 with other organizations, the ILO — 35 agreements with states and 24 with other organizations,¹⁸ and the ECSC concluded till 1976 5 agreements with third states (these agreements were also signed by its member — states) and 4 agreements with other organizations.¹⁹ The CMEA made use of its statutory rights four times by concluding agreements on cooperation with Finland, Mexico and Iraq, and also with Yugoslavia on her participation in the activities of the CMEA Council.

To the next category, most frequently occurring in the statutes, belong

¹⁶ J. MAKARCZYK, *Finansowanie rozwoju gospodarczego w systemie Narodów Zjednoczonych (IBRD, IFC, IDA) [Financing of Economic Development in the UN System]*, Wrocław—Warszawa 1974, p. 196 (a quotation from A. BROCHES), *op. cit.*, p. 370.

¹⁷ Cf., for instance, G. HARTMANN, *The Capacity of International Organizations to Conclude Treaties*, in: *Agreements of International Organizations and the Vienna Convention on the Law of Treaties*, Wien—New York 1971, p. 155; J. SCHNEIDER, *Treaty-Making Power of International Organizations*, Geneva—Paris 1959, p. 72.

¹⁸ Cf. the table in HARTMANN'S paper, *op. cit.*, p. 155.

¹⁹ According to the data published in the Official Journal of the European Communities.

powers to conclude agreements concerning specific domains. Not as extensive as general treaty-making powers, they nevertheless permit organizations to exercise a certain degree of freedom.

Among them are provisions concerning co-operation with other international organizations. But also in this group considerable differences can be noticed as to both the scope of powers and the precision of stipulations. Some statutes define more closely the organizations which may be parties to treaties, whereas in other cases they permit to establish a cooperation without defining its form. Such differences also appear in the system of UN organizations. Thus, for instance, according to Articles 57 and 63 of the UN Charter, the UN Economic and Social Council has been endowed with the competence to conclude bilateral agreements with specialized agencies. But, under this provision, the Council concluded agreements not only with all specialized agencies but also with the International Atomic Energy Agency (IAEA) which, *sensu stricto*, is not a UN specialized agency.²⁰ The above-mentioned agreements were later supplemented by numerous additional agreements.²¹

On the other hand, the statutes of some specialized agencies do not contain any specific definition of the other party to co-operation agreements. As an instance we may quote here Article 25 of the Constitution of the Food and Agricultural Organization (FAO):

"The Organization shall establish effective relations and cooperate closely with such other inter-governmental organizations as may be desirable. Any formal agreements entered into with such organization shall be subject to approval by a two-thirds vote [...]"²²

Furthermore, the FAO Constitution confines the powers of the Organization to concluding agreements with organizations having "related responsibilities", and as to other international organizations, the Director General may enter into agreements with them "subject to any decision of the Conference" and

"for the maintenance of common services, for common arrangements in regard to recruitment, training [...] and for interchanges of staff".²³

²⁰ For a list of these agreements see A. ABRASZEWSKI, *Koordinacja działalności organizacji międzynarodowych w systemie Narodów Zjednoczonych* [Coordination of the Activities of International Organizations in the United Nations System], Warszawa 1973, p. 79.

²¹ *Ibid.*, p. 181.

²² Analogously the provision of Article 25 of the WMO Convention.

²³ Article XIII of the FAO Constitution; analogously Article XI of the UNESCO Constitution.

So these powers are considerably limited as to the scope of their application. However, there is no interrelation between the statutory powers and the practice of a given international organization. In the course of 20 years, the UN concluded 47 agreements with international organizations, the WMO — 4, WHO — 10, FAO — 9, UNESCO — 7.²⁴

Outside the UN system, it is the specialized organizations of the Organization of American States (OAS) that possess wide powers to enter into cooperation agreements (Article 134 of its Charter). However, the OAS, which belongs to the oldest international organizations of a general character, concluded till 1970 only 3 agreements (with FAO, ILO and UNESCO).

Also the CMEA, according to Articles III and XII of its Statute, is empowered to conclude agreements to maintain relations with international organizations. The relevant provision quotes the "organs" and "economic organizations" of the UN as well as "other international organizations". Hence, the CMEA is empowered to enter into agreements with all international organizations, while the Statute, without defining, the subject-matter of such agreements, leaves to the Council to decide on their character and form. As yet the Council concluded two agreements in 1975 under this provision — with the International Atomic Energy Agency and with the Danube Commission. However, the Council entered into a number of agreements with the organizations of its member-states — in advance of the relevant provision (Article XII, point 2) adopted only in 1979.

Provisions concerning the competence of international organizations to conclude agreements within the scope of their operational activities may be included in the same category of statutory rules. As an instance, we may mention here the EEC provisions determining the Community's rights to enter into tariff and trade agreements, or the provisions of the UN Charter concerning agreements on establishing armed forces.

Article 111 of the EEC Treaty regulates the matters of a common customs policy and authorizes the Organization to conclude agreements on replacing bilateral agreements of its member-states by agreements between the EEC and third states, and Article 113 stipulates that the EEC states shall conduct a common commercial policy and confers on the Community the competence to enter into trade agreements. However, the lack of definition of "commercial policy" in the EEC Treaty has undoubtedly contributed in practice to a rather extensive interpretation of the above-mentioned provisions. As a result, the Community has concluded, apart from classic trade and customs agreements, a number

²⁴ Cf. G. HARTMANN, *op. cit.*

of agreements concerning the world food programme, industrial co-operation and fishery zones.²⁵ Till 1978, the EEC entered into over 40 customs agreements and over 70 trade agreements, and also acceded to a number of multilateral conventions.

Association agreements constitute a separate group within the EEC activities. Article 238 of the EEC Treaty empowers the Community to conclude such agreements with a third state, a union of states or an international organization. Also in this case the practice is somewhat different from the statutory provisions. The EEC concluded association agreements both with individual states (Greece, Turkey, Cyprus, Malta, Morocco, Tunisia) and with large state groupings, for instance, the Yaunde Convention to which 18 African and Malgasian states are parties. At the same time, the majority of these agreements was concluded in the form of "mixed agreements", that is, with the participation of EEC member-states, though it was the Community itself that was unambiguously endowed with the necessary authorization by the Treaty.

The situation in the United Nations has developed quite differently. Under Article 43 of the UN Charter, special agreements should have been concluded between the UN Security Council and UN Members or groups of Members on

"armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security".

As is well known, the UN Security Council has never concluded any agreement under Article 43. For agreements concluded by the United Nations for the purpose of maintaining peace another legal basis is to be sought (see below).

Finally, the third group of powers established by a statutory rule consists in provisions strictly determining the kind of agreements to be concluded as, for instance, head-quarters agreements and agreements on the privileges and immunities of organizations and their staff. Provisions of this kind are embodied in the statutes of three organizations — the Council of Europe, the EFTA and OAS. For instance the Statute of the Council of Europe authorizes the Organization to conclude a special agreement

"with the Government of the French Republic defining the privileges and immunities which the Council shall enjoy at its seat".²⁶

²⁵ However, some of these treaties have been also signed by EEC member States.

²⁶ Article 40 of the Statute of the Council of Europe; also cf. Article 35 of the EFTA Convention.

In practice, however, headquarters agreements belong to the most numerous; they have been concluded by almost every organization with the host state, and sometimes between two organizations.

Apart from the respective statutory law, it is the secondary law of an organization, i.e. its resolutions, that may sometimes constitute the legal source of an agreement. Such a possibility is expressly envisaged in the Statute of the Council of Europe, which entitles its Committee of Ministers to consider the action "required to further the aim of the Council of Europe, including the conclusion of conventions or agreements" (Article 15). In fact, the Council concluded in 1950, in virtue of the respective resolutions of the Committee of Ministers, agreements with the ILO, FAO and UNESCO.²⁷

Some authors maintain that the ECOSOC Resolution No. 222 (IX) has established the legal basis for agreements on technical assistance.²⁸ In fact, numerous agreements have been concluded on this basis between the UN specialized agencies and developing states.²⁹ However, neither the UN Charter nor the statutes of specialized agencies contain authorizations to take such decisions. Thus, if we even recognize that the ECOSOC Resolution No. 222 (IX) constitutes in fact the legal source of agreements on technical assistance, we must admit at the same time that the Council's competence to pass it had no basis in an explicit statutory rule, but at most in a teleological interpretation of Article 55 of the UN Charter. The viewpoint recognizing the above-mentioned resolution as the legal source of agreements concluded by specialized agencies is also open to doubt in view of the reciprocal legal relations between the UN and its specialized agencies, which have been established in the respective agreements.³⁰

The above review of constitutional provisions lead to the conclusion that a considerable part of agreements concluded by international organizations had no basis in an explicit competence rule. The founding states of organizations established in the 40ties and 50ties probably neither anticipated nor desired such an active participation of international organizations in the treaty-making practice. If we consider that the

²⁷ Cf. M. LACHS, *Umowy wielostronne* [Multilateral Treaties], Warszawa 1958, p. 61.

²⁸ Cf. M. PASZKOWSKI, *op. cit.*, p. 798; J. M. WOUW, *Formal Aspects of the Technical Assistance Agreements Concluded by the UN Family of Organizations*, in: *Agreements of International Organizations...*, p. 107.

²⁹ J. M. WOUW, *op. cit.*

³⁰ Although the text of the ECOSOC Resolution is formulated as a decision, the UN may on the basis of the cooperation agreements already concluded make only recommendations to its specialized agencies.

number of relevant provisions is so small, it is astonishing that the legality of agreements concluded by international organizations has been so rarely questioned. In any case, the lack of statutory provisions has never been regarded as an obstacle to the passage of extrastatutory resolutions by international organizations. The practice of international organizations reflects the view that an organization may take measures which ensue from the functions conferred on it, and which are consistent with its statutory aims, when a specific situation is not regulated by its statutory rules. Undoubtedly, the way to such practice has been paved by the ICJ pronouncing itself twice for the recognition of the powers of the United Nations,

"which, though not expressly provided for in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties".⁸¹

And the ECSC Court, considering that the interpretation based on implied powers is "generally recognized", held that the provisions of any international agreement also contain such supplementary provisions whose lack would deprive them of their meaning, and would make their reasonable and purposeful application impossible.⁸² The position of the legal doctrine is rather favourable to an extensive interpretation, though the question of its scope remains still controversial. Also in regard to international agreements the admissibility of implied powers is rarely questioned.⁸³ To the adversaries of the interpretation based on implied powers belongs H. Chiu. He submits that even "if a treaty has conferred a right upon an entity, it does not necessarily follow that such entity can exercise that right by means of concluding another international treaty".⁸⁴ While not denying that this view is generally correct, the present author believes that any interpretation should always be applied *ad casum*.

In any case, the comparison of statutory provisions with agreements concluded by individual organizations shows that in many instances only an interpretation based on the implied competence as "being essential to the performance of (its) duties" could create the legal basis

⁸¹ ICJ Reports of Judgements, Advisory Opinions and Orders, 1949, p. 182, and *ibid.*, 1954, p. 57.

⁸² Case No. 8/55 (*Sammlung der Rechtssprechung des Gerichtshofes der Europäischen Gemeinschaften*, 1955, p. 312).

⁸³ Cf. W. MORAWIECKI, *Funkcje organizacji międzynarodowej* [The Functions of International Organization], Warszawa 1971, p. 166.

⁸⁴ H. CHIU, *The Capacity of International Organizations to Conclude Treaties, and the Special Legal Aspects of the Treaties so Concluded*, The Hague 1966, p. 32.

for the conclusion of a given agreement.³⁵ For instance, the majority of organizations, whose statutes contain provisions on entering into cooperation with other organizations, has concluded agreements irrespective of whether their statutes contained an explicit authorization to do so or not. The agreement on cooperation concluded between the ECSC and ILO³⁶ constitutes a characteristic instance of divergencies between regulations and practice: Article 93 of the ECSC Treaty authorizes the Organization to maintain all appropriate relations with the United Nations and the OEEC, and Article 12 of the ILO Convention empowers the Organization to cooperate

“with any general international organization entrusted with the co-ordination of the activities of public international organizations [...] and with public international organizations having specialized responsibilities in related fields”.

Despite these unequivocal provisions both organizations have considered themselves competent not only to conclude cooperation agreements but also to extend the circle of their partners.

Another phenomenon of practice is manifested by the already mentioned numerous technical assistance agreements concluded by the UN and its specialized agencies, conformable only to three statutes (WHO, FAO, and UPU) which, while containing provisions concerning technical assistance, do not explicitly authorize these organizations to conclude international agreements. The competence of all these organizations was based only on an extensive interpretation of Article 55 of the UN Charter.

Also the UN competence to conclude agreements on military contingents may be recognized only on the basis of a teleological interpretation of Articles 24 and 40 of the UN Charter. In this instance, Article 43 of the UN Charter is not applicable, since the manner of calling up military contingents, their character, and the terms of their use are different from those stipulated by the UN Charter. Also the form of the agreements differs in practice. Whereas under the UN Charter they should be ratified, all hitherto concluded agreements have been made in the form of an exchange of letters between the UN Secretary General and the states supplying a contingent.³⁷ Moreover, they constitute only

³⁵ I. I. LUKAŠUK seems to confine himself to the requirement that a treaty be not *contra legem*: “Practice has proved that organizations conclude such treaties that are not directly envisaged by their statutes, but which do not conflict in fact with the aims and principles of such organizations” (*Parties to Treaties — the Right of Participation*), RCADI, 1972, part I, p. 271.

³⁶ JODC 167/1953.

³⁷ Cf., for instance, Exchange of letters (with annexes) constituting an agreement concerning the service with the United Nations Peace Keeping Force in

ad hoc agreements.³⁸ Then, in turn, the competence to conclude agreements on the status of the UN peace forces with the host state, on the territory of which they are to be stationed, ensues necessarily from the UN Security Council decision on the use of armed forces.³⁹ This is then an instance of implied competences based on the binding decision of an international organ.

The majority of the constitutions of international organizations contain provisions concerning their headquarters as well as their privileges and immunities, but also in this regard only few statutes empower international organizations to enter into relevant agreements (the Council of Europe, EFTA, OAS). However, the competence of any organization to conclude agreements on its headquarters as well as on privileges and immunities is universally accepted. For it is considered that once an organization has been established, and its permanent seat indicated and accepted by the host state, it must be also competent to conclude the respective agreement. Although the competence of the organization could be limited to the possibility of concluding a civil law contract only,⁴⁰ the majority of headquarters agreements also regulate the questions of privileges and immunities which — as L. Bota stresses — belong to the domain of international law.⁴¹

In summing up, we arrive at the conclusion that the treaty practice of international organizations has undoubtedly gone beyond the framework of their statutory powers. On the other hand, the existing regulations are few and inadequate to the growing participation of international organizations in the present-day international relations. This may justify the application of a functional interpretation. It should be also stressed that the treaty practice of international organizations has never

Cyprus of the national contingents provided by the Government of Australia (UNTS 1966, vol. 557, p. 86), similarly an Agreement with Austria (UNTS 1967, vol. 606, p. 402) or an Agreement with Finland on contingents for the UNEF (UNTS, vol. 271, p. 135), with Sweden (*ibid.*, p. 187), with Canada (UNTS, vol. 277, p. 191), with Norway (UNTS, vol. 274, p. 17).

³⁸ D. W. BOWETT named agreements defined in Article 43 of the UN Charter "standby agreements" (*United Nations Forces. A Legal Study of United Nations Practices*, London 1964).

³⁹ Cf., for instance, the agreement between the UN and the Government of the Republic of Cyprus concerning the status of the United Nations Peace-Keeping Forces in Cyprus (UNTS, vol. 492, p. 58).

⁴⁰ For instance, the agreement concluded between the UN and Switzerland on Arlana is resembling as to its substance, rather a civil law contract.

⁴¹ L. BOTA, *The Capacity of International Organizations to Conclude Headquarters Agreements, and Some Features of These Agreements*, in: *Agreements of International Organizations...*, p. 66.

been formally opposed neither by the members of any organization nor by a potential party to an agreement.

Authors who as H. Chiu reject the concept of implied powers explain the treaty-making rights of international organizations by the development of a rule of international customary law, under which these organizations possess today treaty-making capacity.⁴² This concept, however, does not explain the actual state of things. Treaty-making capacity — as indicated above — is a feature of international personality, recognized by international customary law. This capacity is not tantamount to the competence to conclude treaties but is a prerequisite to it. After all, the analysis of the practice compels H. Chiu — the author of a comprehensive monography on *The Capacity of International Organizations to Conclude Treaties* — to confine his opinion to the following conclusion: "Many constitutions are drawn up in terms of functions or purposes rather than authority or powers, and in a determination of the limitation on the capacity of an international organization, its functions and purposes are the principal guide."⁴³

There is no doubt that till today there exists no rule of customary law endowing international organizations with general treaty-making competence. Does, however, such law exist in regard to specific agreements? At this point headquarters agreements and agreements on privileges and immunities come to mind, since they are concluded by almost all organizations without any explicit statutory authorization. They are, however, an instance of powers which, according to the ICJ, have been by a necessary implication conferred upon any international organization as "being essential to the performance of its duties".

Finally, we should mention agreements, very few indeed, which are based not on the constituent instruments of international organizations, even if we apply to them an extensive interpretation. In this connection one may mention agreements on the protection of environment and on fishery zones concluded by the EEC,⁴⁴ and association agreements conclu-

⁴² H. CHIU, *op. cit.*, p. 34.

⁴³ *Ibid.*, p. 47.

⁴⁴ However, according to the EC Court of Justice, the Community possesses the relevant competences. Expatiating on its standpoint previously exposed in the well-known judgement in the AETR case of 1971, the Court stated in the Kramer Case that all the relevant resolutions (that is, Article 3 (d), Article 38 ... of the respective resolutions of the Council and Article 102 of the Act of Accession) give rise to the Council's competence to take measures towards the conservation of the biological resources of the sea, and from those rights and duties "stems the Community's competence to undertake international obligations towards the conservation of the resources of the sea" (*Rechtssprechung des Gerichtshofs der Europäischen Gemeinschaften*, 1976, p. 1279).

ded by the EFTA and GATT. In my opinion, their legality has a twofold basis: first, customary law under which these organizations as international persons possess treaty-making capacity, and second, the will of their member states, which is expressed either by a resolution passed with their participation or by the lack of objections to the resolution if it is not passed by the plenary organ.

III. Parties to a Treaty in which an International Organization is Participating

Article 1 of the ILC draft on treaties concluded between states and international organizations contains the following provision:

"The present Articles apply to

a) treaties concluded between one or more States and one or more international organizations, and

b) treaties concluded between international organizations".

However, the variety of the existing arrangements exceeds already today the picture represented in the draft which arises from traditional bi- and multilateral relations. A new type of bilateral treaty, in which one side was represented by a number of states, was developed as early as the previous century. A typical example of such structure is illustrated by such peace treaties as the Versailles Treaty of 1919 or the Paris Peace Treaties of 1947.⁴⁵ Later, this type of treaties emerges with new participants, as in the case of agreements concluded within the framework of the Extended Programme for Technical Assistance (EPTA), when on the one side there is a State and on the other a number of international organizations. Yet already these treaties have given rise to controversies in the doctrine. Some authors regard them as bilateral treaties, others — as R. Higgins — consider them bilateral in form but multilateral in practice. Finally, there are authors who include them in the category of multilateral treaties.⁴⁶ And yet this is not a dispute only about a denomination. After the European Communities have been created, and with the development of their treaty practice, especially that of the EEC, the composition of parties to a treaty becomes more and more complex. Apart from the usual parties to a treaty, there emerges a party composed of different subjects — an international organization and its member-states. It should be stressed that despite the participation of

⁴⁵ M. LACHS, *op. cit.*, Warszawa 1958, pp. 14—15.

⁴⁶ Relevant views in the doctrine, cf. J. WINIECKI, *Umowy o pomocy technicznej ONZ. Treść — Cechy szczególne — charakter prawny* [Agreements on the UN Technical Assistance. Purview — Specific Features — Legal Character], "Studia Prawnicze", 1971, vol. 31, pp. 210—211.

several subjects in the treaty, it is a bilateral treaty, though, obviously, we cannot exclude the establishing of an even more complex construction in the future, comprising composite entities on both sides. For instance, such a situation may emerge, should an agreement between the EEC and its member-states on the one side and the CMEA and its member-states be concluded.

The literature abounds in attempts at finding a proper denomination for this kind of treaties. In Poland J. Makowski, and later M. Lachs, described them as concluded by "a group of parties".⁴⁷ In Soviet doctrine, W. N. Durdenevskij introduces a differentiation between parties to and participants in a treaty.⁴⁸ On the other hand, A. N. Talalaev uses the terms "mixed treaty" or "composite treaty" and "participant" in a treaty (adding the English term "signatory") to describe treaties with participating legal persons not being subjects of international law.⁴⁹ In English literature such treaties are called by some authors "bipartite" and "multipartite" as distinguished from "bilateral" and "multilateral".⁵⁰

As a result of the participation of international organizations in international relations we have today, within the framework of traditional bilateral and multilateral treaties, approximately eight structural variants, of which at least five are already applied in practice.

Bilateral Treaties

organization	member	} state
	non-member	
organization and member-states	— state	
organization and member-states	— organization	
organization and member-states	— organization and member-states	
organization	— organization	

Multilateral Treaties

organizations	— states
organizations	— organizations
organization and member-states	— states
organization and member-states	— states
organization and member-states	— organizations

⁴⁷ J. MAKOWSKI, *Podręcznik prawa międzynarodowego* [A Textbook of International Law], Warszawa 1948, p. 421; M. LACHS, *op. cit.*

⁴⁸ Quoted after J. WINIECKI, *op. cit.*, p. 210.

⁴⁹ A. N. TALALAEV, *Pravo meždunarodnyh dogovorov. Obščie voprosy* Moskva 1980, p. 94.

⁵⁰ Cf., for instance, C. OSAKWE, *The Concept and Forms of Treaties Concluded by International Organizations*, in: *Agreements of International Organizations...*, pp. 188—189.

The emergence of international organizations as parties to treaties gave birth to a number of procedural questions as those related to general powers, reservations, ratification, etc. However, the group of problems connected with the legal relationship of member states, both in regard to the organization and to the other party to the treaty, has remained the main and still controversial issue. It comes to light not only when an organization itself concludes a treaty, but also when its member-states participate therein, though undoubtedly in the latter case the situation is considerably less complicated. The problem does not emerge, of course, with equal force in relation to each treaty. It may even not appear at all, for instance, when treaties directly concern the functioning of organizations, as headquarters agreements or co-operation agreements between two or more organizations.

However, these treaties, too, create sometimes a different legal situation for the other contracting party. When one party to a treaty is a non-member state, we face a legal relation of two independent subjects of international law. When, however, the other party is a member-state of an organization, obligations arising for this state are manifested on two levels: international and intra-organizational, though the latter also belongs to the system of international law. For the state plays the role—as M. Lachs states—of “a factor cooperating in the crystallization of the will of its contracting party, and therefore jointly responsible for its decisions”.⁵¹

There are, however, fields where the activities of international organizations are carried out through the co-operation of their member-states or simply through their activities. A classic instance of such activities are customs or trade agreements concluded by the European Communities. It would seem that the EEC Treaty resolved the question of the responsibility of its member-states for obligations resulting from the Community's treaties by stating that “treaties concluded by the Organization are binding on the Community's organs and its member-states”. The statement that treaties concluded by the Organization are binding upon its organs cannot cause any doubts, yet the question concerning the nature of obligations assumed by the member-states has provoked disputes from the very beginning of the EEC existence. In fact, the above-mentioned treaty provision does not resolve definitely the question of whether it is only the Community that is party to a treaty or its member-states as well. In other words, the question is whether the obligations of the member-states, as stipulated in Article 228, arise only in relation to the Community (that is, whether the obli-

⁵¹ M. LACHS, *op. cit.*, p. 63.

gations of the states are limited only to the provision of means enabling the Community to carry out its treaty obligations), or whether these obligations also create a legal nexus between each member-state and the other party to the treaty. The Community's practice seems to indicate that among the representatives of its organs and member-states the opinion has prevailed that it is the Organization that is exclusively responsible for the performance of the treaty to the other party. Such an interpretation is supported by the Community's practice of approving almost every treaty through a regulation of the Council, with its closing formula:

"This regulation shall be binding in its entirety and directly applicable in all member-states".

Also the application of a dual procedure in the EEC practice — part of the treaties is concluded exclusively by the Community's organs, but some are concluded with the member-states participating — shows that the relevant participants are aware of the existence of a different legal relation. "A third state may be confident" — says H. Krück in his comment on the practice of concluding treaties with the participation of member-states — "that it has concluded a treaty with the subject of law which in accordance with the division of competences in the Community may actually carry out obligations arising from the treaty".⁵²

The text of the Treaty establishing the Carribean Community shows more explicitly the intra-organizational responsibility of its member-states. Article 20 of the Treaty contains the following formula:

"Each member-state hereby agrees to take such action as is necessary to make effective in its territory the provisions of this Article and shall promptly inform the Secretary of such action".

Besides, this provision of the Carribean Community Treaty may be related not only to actions necessary to the performance of a specific treaty, but also to possible changes in the legislation of the member-states, regulating the questions of transformation, priority to national laws, etc.

In turn, the CMEA Statute does not stipulate whether agreements concluded by the Organization are binding upon the member-states or not. In principle, the CMEA Council has no legal means to impose the performance of the Council's contractual obligations upon the member-states. This situation has found its expression in the provisions of the hitherto concluded agreements. For instance, the Agreement on Co-opera-

⁵² H. KRÜCK, *Völkerrechtliche Verträge im Recht der Europäischen Gemeinschaften*, Berlin—New York 1977, p. 263.

tion with the Finnish Republic of May 16, 1973, envisages that it shall approved (*utverjdenye*) by the CMEA and Finland "after its approbation (*udobrenye*) by the member-states". There are no known cases of any negotiated text of an agreement to which a CMEA member-state has not given its approbation (after all, the text is consulted with the member-states at all stages of negotiation). Nevertheless, there remain doubts as to the legal effect of such approbation. It is not quite clear whether "approbation" is an act similar to that of accepting a recommendation of the Council or whether it constitutes only an expression of "interest" by a member-state. The difference is considerable, and on the qualification we accept depends, *inter alia*, the question of the necessary number of approving states.⁵³

The organization itself had, apparently, also doubts as to the required number of approbations. In 1976 at its 66th meeting the Executive Committee requested the Secretariat and the Legal Advisory Group of the member-states to examine the effectiveness of the Council's recommendations. As a result, the Legal Advisory Group adopted a resolution in which was stated that with regard to decisions concerning the conclusion of treaties the unanimity of all member-states was required (para. 10). Furthermore, the Legal Advisory Group stressed the view that the member-states were not only obliged to ensure the carrying out of Council recommendations that were approved by them but also that they were obliged under Article II (2g) of the CMEA Statute to inform the Council of the steps taken (para. 28).

The current juridical literature is limited to considerations on the situation existing in the European Communities, being at the same time divided in its views over the interpretation of Article 228 of the EEC Treaty. Some authors maintain that all EEC member-states are directly under obligation to the other party of a treaty, but do not substantiate their opinion in detail. However, the majority of authors regard the provisions of Article 228 as establishing obligations towards the Organization only. For instance, H. Krück assumes that the Organization acts as an independent international person; thus its legal act may *eo ipso* be attributable only to her, and international treaties concluded by it can be binding only upon itself.⁵⁴ As to the legal effects that are to be ascribed to these provisions, A. Bleckmann is of the opinion — probably rightly — that Article 228 acts as a general transformation or executive

⁵³ Cf. A. WASILKOWSKI, *Zalecenia Rady Wzajemnej Pomocy Gospodarczej* [Recommendations of the Council for Mutual Economic Aid], Warszawa 1969, p. 261 ff.

⁵⁴ H. KRÜCK, *op. cit.*, p. 126.

rule (*Vollzugsbefehl oder Transformator*).⁵⁵ Thus, according to A. Bleckmann, "if the other party to a treaty wants to acquire the right to demand from the EEC member-states that the treaty be executed, or — in case of non-execution — claim damage, it should demand that, together with the Organization, the member-states also participate in the conclusion of the treaty".⁵⁶

I accept this viewpoint, in any case with regard to the EEC, since in my opinion any other interpretation of Article 228(2) would be contrary to the spirit of this provision taken as a whole. For it does not contain a general competence rule, but refers to the particular provisions of the Treaty, and it is they that define the treaty-making competence of the Community. This also means that a treaty concluded by the Community in contravention of its particular statutory provisions cannot become a part of the EEC law, that is, it cannot be legally effective in relation to the member-states, though it will be binding upon the EEC and the other party to the treaty in accordance with the principles of general treaty law. It may be also reckoned that the provisions of Article 228 imply — in case of collision — the priority of the Community's treaties over other EEC legal acts.

The same conclusions may apply to the Carribean Community Treaty. But when the statute of an organization defines its treaty-making competence without containing a general transformation provision, the binding force of treaties concluded by this organization upon its member-states will be similar to that of other resolutions thereof. The present author submits that an organization that is capable of taking decisions binding upon states may also adopt a decision binding its member-states to take necessary measures to carry out a treaty concluded by it within its powers. But in no case a direct legal relation is created between the other party to the treaty and the organization's member-states non-participating in this treaty.

The members of the Institute of International Law adopted in 1973 a draft convention based on analogous assumptions. Article 9 of the draft states that a treaty concluded by an organization is binding upon it unless its statute provides otherwise, while the obligations of its member-states stem from their obligations existing within the framework of the organization.⁵⁷

⁵⁵ A. BLECKMANN, *Die Position des Völkerrechts im inneren Rechtsraum der Europäischen Gemeinschaften*, "Jahrbuch für Internationales Recht", vol. 18, 1975, p. 302.

⁵⁶ A. BLECKMANN, *Der gemischte Vertrag im Europarecht*, "Europarecht", vol. 4, 1976, p. 30.

⁵⁷ "Annuaire de l'Institute de Droit International", 1973, p. 382.

Professor P. Reuter, Special Rapporteur of the UN International Law Commission, adopted in his first draft of the respective article a somewhat different concept. Article 36 bis submitted in the VI Report states in its paragraph 1 that a treaty concluded by an organization.

“gives rise directly for States members of an international organization to rights and obligations in respect to other parties to that treaty if the constituent instrument of that organization expressly gives such effects to the treaty”.⁵⁸

However, in situations not regulated by the organization's statute, paragraph 2 envisaged — on the assumption that there existed the material competence of the organization, and at least the presumed competence of parties to the treaty — the creation of rights and obligations for the member-states on condition that they were accepted by them, even implicitly. And to exclude any doubts whatever, Professor Reuter, indicating in his commentary the positive side of such solution for the stability of legal transactions, stated that “states members of the organization are bound, just as the organization itself is bound [...]”.⁵⁹

The above-quoted draft article calls for reservations. Apart from the fact that so far it is only the EEC Treaty that contains provisions to which Article 36 bis may refer, though even that is disputable, the very assumption ensuing from the presumption of a legal relation between member-states and the other party to a treaty is rather doubtful. Moreover, the draft leaves entirely out the “consent” of the other party to the treaty to extend the number of parties thereto.

As a result of the discussion at the ILC, the draft of Article 36 bis was modified. In the version submitted in 1979 (still preserved), member-states were accorded a position resembling that of third states, which was expressed in the heading of that article (Effects of a treaty... with respect to third states members of that organization”). At present Article 36 bis is expressly based on the concept of obligations of member-states to the organization. In its present-day version, the said provision stipulates that should the relevant rules of the organization envisage that the organization's treaties are binding on its member-states, these states “shall observe the obligations, and may exercise the rights” which arise for them from the treaty. If, however, the organization's constitution does not contain relevant rules, any obligations of its member-states may arise only in case of recognition by the parties to the treaty as well as the member states “that the application of the treaty necessarily

⁵⁸ Cf. Sixth Report on the Question of Treaties Concluded between States and International Organizations or between Two or More International Organizations, Doc. A/CN.4/298, 1977, p. 22.

⁵⁹ *Ibid.*, p. 25.

entails such effects...".⁶⁰ Thus the present ILC draft reflects the prevailing juridical opinion, though it is nevertheless doubtful whether the member-states of an organization are "third states" in the traditional understanding of this term.

At this point we should also mention a group of questions connected with the transformation of treaties into the law of the organization and member-states. Although they belong to the internal rules of organizations or to the national legislation of the respective member-states, they are not indifferent to the other party to a treaty, since they are linked not only to the effects of that treaty but also to the rules of collision and possible claims. So far, as already mentioned, only the EEC has developed the practice of incorporating treaties into the Community law by the Council's regulations. The majority of organizations have no legal means—i.e. binding decisions—which would oblige their member-states to carry out the provisions of treaties concluded by any organization.

Accordingly, I am of the opinion that, considering the present state of international law in respect of international organizations and the prevailing practice, in all cases when the effects of a treaty concluded by an organization shall directly affect its member-states, the interests of all parties to the treaty will be best safeguarded by mixed treaties, that is by treaties to which along with the organization also its member-states are parties.

⁶⁰ Cf. ILC Report 1979, Doc. General Assembly 34 Session, Suppl. No. 10/A.34/10/, p. 396.

Les conflits dans le temps des règles de droit international privé

par MIECZYŚLAW SOŚNIAK

Introduction

Le problème du croisement ou du doublement des conflits de règles dans l'espace avec ceux dans le temps a été discuté dans la doctrine depuis longtemps. L'une des premières mentions en la matière se trouve déjà chez Blondeau¹. Le XIX^e siècle exception faite de certaines positions isolées mais très précieuses comme l'ouvrage de Savigny², n'y apporte pas d'éléments originaux. C'est à partir de l'année 1900 que le problème commence à occuper une place dans la doctrine et la jurisprudence. La première grande discussion de ce qu'on appelle le double conflit de règles s'est développée à l'occasion de l'entrée en vigueur du code civil allemand. On a avancé alors la question centrale de savoir quelles règles de conflits — celles dans le temps ou celles dans l'espace — doivent être appliquées en premier lieu en cas de leur conflit. La priorité des règles temporelles a été défendue à cette époque, entre autres, par Habicht³, contrairement à l'opinion de Niedner, Zitelmann⁴ et Kahn⁵.

Un des premiers essais de solution synthétique fut l'oeuvre de F. Affolter⁶ qui s'appuyait à cet égard sur les résultats de ses études:

¹ BLONDEAU, *Essai sur ce qu'on appelle l'effect rétroactif de lois*, Sirey, Recueil Général des lois et des arrêts, vol. IX, 1809, II^e partie, p. 277 et suiv.

² La présentation des limites locales et temporelles d'application des règles, dans son ouvrage *System des heutigen römischen Rechts*, vol. VIII, Berlin 1849, il faut considérer comme fondamentale.

³ H. HABICHT, *Die Einwirkung des Bürgerlichen Gesetzbuches auf zuvor-
enstandene Rechtsverhältnisse*, 3^e éd., Jena 1901.

⁴ E. ZITELMANN, *Verhältnis der örtlichen und der zeitlichen Anwendungs-
normen zueinander*, «Iherings Jahrbücher», 1901, p. 189 et suiv.

⁵ F. KAHN, *Das zeitliche Anwendungsgebiet der örtlichen Kollisionsnormen*, «Iherings Jahrbücher», 1901, p. 299 et suiv.

⁶ F. AFFOLTER, *Das intertemporale und internationale Recht der zeitlichen-
und örtlichen Collisionsnormen des bürgerlichen Rechts*, «Zeitschrift für Privat-
und Öffentliches Recht», 1903, p. 125 et suiv.

fondamentales concernant le droit transitoire. Il a appliqué aux doubles conflits les règles du droit transitoire⁷. Son premier essai de systématisation du double conflit de règles méritait une attention particulière⁸.

A côté de la doctrine allemande, les problèmes du double conflit ont été discutés — au début de notre siècle — dans la littérature italienne⁹, et ensuite dans la littérature française où on a aussi essayé de systématiser les doubles conflits¹⁰. La doctrine française a présenté plus tard un nombre d'études précieuses concernant la comparaison du domaine des conflits dans le temps et dans l'espace¹¹.

Ces problèmes ont été également abordés par la littérature polonaise du droit international privé et du droit transitoire aussi bien avant qu'après la dernière guerre mondiale¹².

⁷ F. AFFOLTER, *Geschichte des intertemporalen Privatrechts*, Leipzig 1902; IDEM, *System des deutschen bürgerlichen Übergangsrechtes*, Leipzig 1903.

⁸ Il a distingué sous ce rapport quatre sortes de doubles conflits (cf. son article de 1903, pp. 138-162): *das intertemporale Recht der zeitlichen Collisionsnormen*, *das internationale Recht der örtlichen Collisionsnormen*, *das internationale Recht der zeitlichen Collisionsnormen* et *das intertemporale Recht der örtlichen Collisionsnormen*.

⁹ Cf., entre autres, A. CAVAGLIERI, *Diritto internazionale privato e diritto transitorio*, Verona 1904; G. DIENA, *Die rückwirkende Kraft des internationalen Privatrechts*, «Zeitschrift für Internationales Privat- und Strafrecht», vol. X, 1900, p. 353 et suiv. Dans la première moitié du XX^e siècle, en Italie, le double conflit de règles a été particulièrement discuté par P. FEDOZZI dans son système de droit international privé (*Il diritto internazionale privato*, 2^e éd., 1939, p. 123 et suiv.) et par G. PACE dans son ouvrage sur le droit transitoire (*Il diritto transitorio con particolare riguardo al diritto privato*, Milano 1944). Dans la littérature italienne contemporaine, ces problèmes sont discutés par A. Giardina, dont les travaux seront cités ci-après.

¹⁰ P. ROUBIER, *Les conflits de lois dans le temps en droit international privé*, «Revue de Droit International Privé», 1931, p. 38 et suiv. Ce sujet a été développé dans l'ouvrage ultérieur de cet auteur, *Le droit transitoire*, Paris 1960, p. 569 et suiv.

¹¹ Ainsi, par exemple, P. LOUIS-LUCAS, *Traits distinctifs des conflits de lois dans le temps et des conflits de lois dans l'espace*, *Mélanges P. Roubier*, Paris 1961, p. 323 et suiv.; Ch. GAVALDA, *Les conflits dans le temps en droit international privé*, Paris 1955; H. BATIFFOL, *Conflits mobiles et droit transitoire*, *Mélanges P. Roubier*, Paris 1961, p. 39 et suiv.

¹² Les questions générales de ce domaine ont été touchées dans la littérature polonaise de la période 1918—1939 par K. PRZYBYŁOWSKI, *Prawo prywatne międzynarodowe* [Droit international privé], Lwów 1935, p. 152 et suiv., et dans la littérature après la guerre par M. SOŚNIAK, *Zasady polskiego cywilnego prawa przechodniego* [Principes du droit transitoire civil polonais], «Zeszyty Naukowe UJ — Prawo», 1955, n° 2, p. 47 et suiv.; IDEM, *Konflikty w czasie norm cywilnoprawnych* [Les conflits dans le temps des règles de droit civil], Kraków 1962, p. 20 et suiv.

Dans le cadre du présent article, il serait impossible de présenter la totalité de cette vaste problématique. C'est pourquoi parmi les quatre possibilités du double conflit, distinguées par la théorie allemande¹³ et française¹⁴, je tâcherai de me concentrer seulement sur deux.

La première et peut-être la plus caractéristique concerne l'application dans le temps des règles de droit international privé, à savoir «le conflit transitoire international»¹⁵ ou — plus précisément — «le conflit transitoire de droit international privé»¹⁶.

La deuxième possibilité du double conflit est souvent considérée comme un fragment d'un plus large problème des conflits internes dans le système indiqué comme compétent. C'est un problème de l'application — sur la base de la désignation d'un droit compétent — des dispositions transitoires internes du système déterminé qui est reconnu compétent («le conflit international transitoire»)¹⁷.

En dehors de notre analyse reste, entre autres, la problématique des conflits mobiles au sens stricte du mot, qui intéresse au plus haut degré la pratique et la doctrine du droit international privé.

I. L'action dans le temps des règles de droit international privé

1. Les opinions générales choisies de la doctrine étrangère

Les remarques esquissées ci-dessous, qui bien entendu ne peuvent pas embrasser la présentation exacte de toutes les opinions qui entrent en jeu, seront considérées comme point de départ pour les réflexions plus détaillées concernant, entre autres, le droit polonais.

Les conflits dans le temps des règles de droit international privé ne sont devenus l'objet d'une réflexion théorique qu'au moment de la codification partielle ou totale de ces règles, donc dans la période relativement récente. Quand le code civil allemand de 1896 a rattaché — de même d'ailleurs que le code de Napoléon de 1804 — le statut personnel à la *lex patriae* au lieu de la *lex domicilii*, comme le faisaient les systèmes antérieurement en vigueur, il a fallu répondre à la question dans

¹³ Cf. l'article cite de F. AFFOLTER, p. 141 et suiv.

¹⁴ Cf. P. POUBIER dans l'ouvrage précité de 1969, p. 569 et suiv. et dans l'article cité de 1931, p. 34 et suiv.

¹⁵ Comme le souligne P. ROUBIER dans l'ouvrage précité de 1960, p. 569 et suiv. et dans l'article précité de 1931, p. 38 et suiv.

¹⁶ Ainsi, par exemple, P. MAYER, *Droit international privé*, Paris 1977, p. 169.

¹⁷ Appelé ainsi également dans la littérature plus nouvelle, cf. P. GRAULICH, *Principes de droit international privé*, Paris 1961, p. 165 et suiv.

quelle mesure les nouvelles règles de conflit s'appliquent aux rapports juridiques créés auparavant¹⁸.

En examinant à cette époque le concours de deux types des règles, E. Zitelmann avançait le besoin de la solution du problème de droit international privé, à savoir la détermination du droit — étranger ou propre — dont il s'agit dans le cas donné, avant le problème du domaine temporel d'application¹⁹. Sinon, il est impossible — à son avis — de trancher la question fondamentale du système intertemporel dont nous devons nous servir. Au début, il faut donc faire le choix du problème spatial et après avoir effectué ce choix, indiquer l'une des lois qui entrent en jeu en considération du temps. Zitelmann a recommandé, pour le règlement de la relation entre les règles de conflit anciennes et nouvelles l'application des principes analogues à ceux qui s'appliquent aux conflits transitoires de droit civil. Là où on appliquerait la loi nouvelle en droit interne, il faut appliquer les nouvelles règles de conflit. Là où on appliquerait la loi ancienne — les anciennes règles de conflit.

Planck, lui aussi, a recommandé de commencer par les principes concernant le droit interne et d'appliquer les dispositions nouvelles ou anciennes de droit international privé selon le cas où elles indiquent la loi nouvelle ou ancienne ou un rapport juridique donné²⁰. Le point de vue semblable a été admis par Habicht²¹.

Il convient de faire remarquer à ce propos que dans un système juridique divisé en dispositions relatives aux différentes provinces du pays (et tel fut le cas du système allemand avant l'entrée en vigueur du c.c. allemand) la solution mentionnée a introduit des difficultés supplémentaires en cas de désignation, comme compétent, du droit ancien non uniforme. Dans ce cas, le conflit transitoire international déjà noué s'est compliqué par un conflit interlocal. On pourrait donc parler non d'un double mais d'un triple conflit de règles.

A l'opinion de Planck s'est associé K. Neumayer²². A son avis, en cas de changement de n'importe quelles dispositions du système juridique donné (y compris celles de conflit), les limites temporelles de leur application doivent être déterminées selon les principes transitoires adoptés dans ce système avant la solution des conflits spatiaux. En effet, conformément aux opinions des auteurs précités, les règles de conflit

¹⁸ Quant à cet exemple, cf. H. BATIFFOL, P. LAGARDE, *Droit international privé*, 6^e éd., vol. II, Paris 1974, n° 314.

¹⁹ E. ZITELMANN dans l'article cité dans « Iherings Jahrbücher », p. 189 et suiv.

²⁰ PLANCK, *Bürgerliches Gesetzbuch nebst Einführungsgesetz*, vol. V, Berlin 1901, p. 248.

²¹ H. HABICHT, *op. cit.*, § 6, p. 39.

²² K. NEUMEYER, *Die zeitliche Geltung der Kollisionsnormen* « Zeitschrift für International Privat-und Öffentliches Recht », XII, 1902, p. 40 et suiv.

anciennes s'appliquent aux cas soumis à l'application de l'ancienne loi substantielle, et le nouveau droit de conflit — aux cas régis par la nouvelle loi substantielle. Des conclusions semblables (au moins en principe) ont été formulées par Diena²³.

Un autre auteur de cette époque, Paetzold, a recommandé de s'adresser aux principes généraux du droit transitoire à défaut de dispositions intertemporelles dans la nouvelle loi sur le droit international privé²⁴, et Frankenstein a demandé de tenir compte «du contenu matériel de l'ordre juridique décisif»²⁵.

Les conceptions favorables à l'application des règles de droit transitoire ont aussi été partagées par Melchior²⁶, et admises dans la jurisprudence allemande entre les deux guerres mondiales. Les tribunaux du Reich ont reconnu que les conflits entre l'ancien et le nouveau droit international privé doivent être tranchés selon les mêmes principes que les conflits entre la loi substantielle ancienne et nouvelle. Dans les deux cas devait donc emporter le système des règles transitoires contenues dans la loi d'introduction du code civil allemand (*Einführungsgesetz*).

L'opinion semblable est aussi acceptée par la doctrine allemande contemporaine²⁷. La conception allemande a été suivie par la théorie suisse²⁸ et par l'ancienne doctrine italienne²⁹. Elle est adoptée en principe dans la doctrine et la pratique française où l'on admet l'application des principes transitoires, en tout cas des principes transitoires généraux³⁰, sur le terrain du droit international privé³¹. Du point de vue du conflit de règles dans le temps, le problème d'application des dispositions de droit international privé est presque identique à celui d'application des règles substantielles³².

Cette opinion peut être reconnue comme dominante, mais pas unique

²³ G. DIENA, *op. cit.*, p. 359.

²⁴ E. PAETZOLD, *La jurisprudence allemande en matière de conflits de lois dans le temps*, «Revue de Droit International Privé», 1927, p. 571.

²⁵ E. FRANKENSTEIN, *Internationales Privatrecht*, vol. I, Berlin 1926, § 11.

²⁶ G. MELCHIOR, *Die Grundlagen des deutschen Internationalen Privatrechts*, Berlin—New York 1971, § 39, p. 65 et suiv.

²⁷ Selon L. RAAPE, P. STURM (*Internationales Privatrecht*, 6^e éd., München 1977, p. 26), «Die zeitliche Grenznorm bestimmt, ob die alte oder die neue örtliche heranzuziehen ist». Analogiquement, au moins en principe, G. KEGEL. *Internationales Privatrecht*, 4^e éd., München 1977, p. 20.

²⁸ De la littérature suisse plus ancienne, cf., par exemple, GMÜR, *Kommentar zum Schweizerischen Zivilgesetzbuch*, vol. V, 1^{re} partie, Bern 1916, p. 16.

²⁹ Entre autres G. PACE, *op. cit.*, p. 119.

³⁰ Cf. à ce sujet Ch. GAVALDA, *op. cit.*, p. 177 et suiv.

³¹ Analogiquement aussi, entre autres, Y. LOUSSOUARN, P. BOUREL. *Droit international privé*, Paris 1978, n° 225 et suiv.

³² Ainsi, par exemple, P. ROUBIER, *op. cit.*, p. 577; Ch. GAVALDA, *op. cit.*,

Dans la littérature de différents pays, on a rencontré et on rencontre toujours des partisans de l'accentuation des différences entre la solution des conflits dans le temps des règles destinées aux rapports internes et la solution des conflits de droit international privé. Il serait difficile de parler d'un groupe uniforme, car les différences dans l'approche de cette question sont importantes. Cependant, la tendance à faire la distinction est toujours vive comme le témoignent les énonciations de la doctrine la plus récente.

En me bornant à quelques phrases seulement sur ce thème, je vais mentionner que c'est déjà dans la période de la promulgation du code civil allemand que Niedner, considérant les règles de droit international privé comme règles de droit public, a préconisé d'y appliquer d'autres principes transitoires que ceux qui sont appliqués au droit civil; il a recommandé, entre autres, la rétroactivité³³. De même Kahn soulevait la particularité des principes transitoires concernant le droit international privé. Conformément à son point de vue et aux opinions rapprochées, la règle appartenant au système ancien n'est applicable que dans le cas où le rapport donné reste en liaison avec le pays du for et l'application de cette règle mène à l'application de la loi du for³⁴. En se référant aux principes transitoires dans le domaine discuté, il faut, en général, tenir compte du caractère spécifique du droit international privé, de la particularité de ses objectifs et de sa méthode en comparaison avec le droit civil³⁵.

2. Les principes transitoires relatifs aux règles de droit international privé

En Pologne, le problème du «conflit transitoire international» était particulièrement important en ce qui concerne l'application de la loi p. 182 et suiv. Cf. aussi H. BATIFFOL, P. LAGARDE, *op. cit.*, I, n° 316 (p. 399 et suiv.) où on cite la jurisprudence française récente qui partage cette opinion.

³³ Cf. par exemple, NIEDNER, *Kommentar zum EG BGB*, 3^e éd., p. 295. Les opinions soutenant le caractère de droit public des règles de droit international privé ont trouvé leur écho dans la littérature polonaise entre les deux guerres, et notamment dans les notes publiés par M. ALLERHAND dans «*Orzecznictwo Sądów Polskich*», fasc. VI, n° 223 et fasc. VII, n° 282. Cependant, l'auteur n'admettait pas dans tous les cas comme conséquence de ce caractère de droit public la rétroactivité des règles de droit international privé. Ses opinions ne jouaient d'ailleurs de rôle plus grand ni dans la doctrine de l'entre-guerres, ni plus tard.

³⁴ Cf. F. KAHN, *op. cit.*, et ses *Abhandlungen zum internationalen Privatrecht*, vol. I, München 1928, p. 368 et suiv. Dans la littérature française entre les deux guerres, cf. X. MARIN, *Essai sur l'application dans le temps des règles de conflits dans l'espace*, Paris 1928, p. 78 et suiv. Dans la littérature italienne contemporaine, cf. A. GIARDINA, *Successione di norme di conflitto*, Milano 1970.

³⁵ Ainsi P. MAYER, *op. cit.*, p. 197. Le cadre de cette esquisse ne permet pas d'entrer plus profondément dans les arguments intéressants de cet auteur.

polonaise portant droit international privé de 1926 sur le terrain d'anciens systèmes de conflit établis par les puissances qui ont partagé la Pologne à la fin du XVIII^e siècle. Ces systèmes se distinguaient l'un de l'autre, ils se distinguaient également de la loi nouvelle. L'admission de la compétence de l'ancien ou du nouveau droit international privé a conduit ainsi aux solutions différentes en matière de loi applicable.

Malgré cela, dans la loi de 1926, on n'a pas à dessein réglé les questions transitoires³⁶. Cela ne veut pas dire d'ailleurs qu'on n'a pas pris une position en ce qui concerne l'application de cette loi dans le temps. La doctrine polonaise de la période 1918 - 1939 admettait en la matière le principe de la non-rétroactivité des règles de droit international privé polonais de 1926³⁷. On l'a justifié entre autres par des considérations générales et notamment la possibilité «des conséquences injustes de la rétroactivité des lois dont les parties ne pouvaient tenir compte». C'étaient donc les considérations de caractère subjectif, liées à l'intérêt des parties. En outre, on a aussi attiré l'attention aux considérations objectives, à la «sécurité juridique»³⁸.

La jurisprudence polonaise de la période 1918 - 1919, elle aussi, a admis le principe de la non-rétroactivité de la loi nouvelle³⁹. Certains arrêts l'ont justifiée en constatant que le silence du législateur en matière d'application de la loi nouvelle dans le temps doit être compris comme le refus de la rétroactivité⁴⁰. Outre ces constatations générales,

³⁶ Bien qu'au cours des travaux de codification M. ALLERHAND et St. WRÓBLEWSKI aient exprimé l'opinion que «la loi doit aussi régler les relations transitoires et qu'il faut réfléchir si les nouvelles dispositions ne doivent pas avoir l'effet rétroactif». Cf. *Protokoły obrad Sekcji Prawa Cywilnego Komisji Kodyfikacyjnej R.P., Prawo międzynarodowe i międzydzielnicowe prywatne* [Procès-verbal des débats de la Section de Droit Civil de la Commission de Codification de la République de Pologne. Droit international et interprovincial privé], vol. I, Kraków 1920, p. 62.

³⁷ Telle était l'opinion dominante après la promulgation de la loi de 1926. Les voix en faveur de son effet rétroactif n'ont pas exercé une influence plus grande. Cf. à ce sujet K. PRZYBYŁOWSKI, *op. cit.*, p. 87 et F. ZOLL, *Międzynarodowe prawo prywatne w zarysie* [Précis de droit international privé], 4^e éd., Kraków 1947, p. 97 et suiv.

³⁸ Cf. K. PRZYBYŁOWSKI, *loc. cit.*

³⁹ Comme le témoigne un nombre d'arrêts de la Cour Suprême de la période d'entre les deux guerres, cité par K. PRZYBYŁOWSKI, *op. cit.*, p. 88. Ce sont, entre autres: l'arrêt du 27 septembre 1927 «*Orzecznictwo Sądów Polskich*», VII, n° 282), l'arrêt du 7 août 1928 (*ibid.*, VIII, n° 238), l'arrêt du 12 juin 1929 (*ibid.*, IX, n° 312) et bien d'autres.

⁴⁰ Ainsi l'arrêt de la Cour Suprême du 20 juin 1939 (Zbiór Urzędowy Wyroków Izby Cywilnej — Recueil officiel des arrêts de la Chambre civ., III, I. 133/30).

on rencontre dans certains arrêts de cette époque des conclusions assez intéressantes en matière de double conflit auxquelles nous allons encore revenir. Très caractéristique à cet égard fut l'arrêt de la Chambre Civile de la Cour Suprême du 26 octobre 1933 ⁴¹.

Sauf ce principe général, ni la pratique, ni la littérature polonaises n'ont élaboré une systématique distincte de doubles conflits. On a justifié l'inutilité d'une telle systématique par l'affirmation que les conflits transitoires de règles de conflits ne se distinguent pas des conflits des règles de droit civil, sauf qu'ils concernent les règles de «rang supérieur». On leur applique ainsi les principes concernant les règles de droit civil. L'élément conflictuel n'enlève aucunement l'actualité à l'application des fondements admis en droit civil pour une solution intertemporelle.

La littérature polonaise de droit international privé de l'après-guerre n'a non plus créé une systématique de ce genre. Elle s'est occupée seulement de la problématique générale de double conflit ⁴².

On n'a plus trouvé opportun de créer un système intertemporel des règles de conflit à l'occasion de l'entrée en vigueur de la nouvelle loi polonaise portant droit international privé de 1965. L'absence de différences fondamentales dans la désignation de la loi applicable entre cette loi et celle de 1926 n'a pas offert un champ plus vaste à l'application des règles transitoires.

La loi nouvelle, tout comme la loi ancienne, a spécialement renoncé à insérer quelques principes transitoires. Toutefois, malgré l'absence de dispositions transitoires dans cette loi, le principe de la non-rétroactivité a été avec force souligné par l'auteur du projet, le professeur K. Przybyłowski ⁴³. Constatant que «dans le domaine du droit international privé, il faut admettre le principe exprimé d'une façon traditionnelle par l'art. 3 du code civil» ⁴⁴, cet auteur a considéré cette affirmation comme «évidente». D'autres solutions n'étaient nullement prises en considération dans les travaux de codification.

Nous pouvons donc reconnaître le principe de l'art. 3 du code civil

⁴¹ C I 977/33 publié dans «Orzecznictwo Sądów Polskich», 1934, n° 244.

⁴² Cf. le chapitre distinct intitulé «Droit transitoire et droit international privé» dans l'ouvrage de M. SOŚNIAK, *Konflikty w czasie norm cywilnoprawnych* [Les conflits dans le temps des règles de droit civil], Kraków 1962, pp. 20 - 33.

⁴³ Dans l'article *Nowe polskie unormowanie problematyki kolizyjnej prawa prywatnego międzynarodowego* [La nouvelle réglementation polonaise des problèmes de conflits en droit international privé], «Studia Cywilistyczne», vol. VIII, 1966, p. 15. Ces développements ont été presque identiquement répétés dans un autre article de l'auteur *Nowe polskie prawo prywatne międzynarodowe* [Le nouveau droit international privé polonais], «Państwo i Prawo», 1966, n° 1, p. 23.

⁴⁴ L'art. 3 du code civil est formulé ainsi: «La loi n'a pas d'effet rétroactif à moins que cela ne résulte de son texte ou de son but».

polonais comme fondement des solutions transitoires par rapport aux anciennes et nouvelles règles de droit international privé polonais.

Cependant la reconnaissance de la non-rétroactivité comme principe fondamental relatif à l'application des règles de conflit polonaises ne signifie pas que tous les conflits transitoires, y compris ceux qui apparaissent dans le cadre du droit étranger, doivent respecter ce principe. Cela conduirait à imposer aux systèmes étrangers l'observation des principes intertemporels dont nous nous écartons parfois. Nous reviendrons encore à cette question.

L'article 3 du code civil admet exceptionnellement la possibilité de l'application rétroactive de la loi nouvelle, lorsque cela résulte de son texte ou de son but. Une telle situation aura sans doute lieu en cas d'intervention de la clause d'ordre public⁴⁵. Notamment, en ce qui concerne le problème de conflit de règles selon l'ancien système de droit international privé, il ne faut pas se référer à une telle approche de la clause — suivant l'ancienne base de son application et son contenu adapté aux notions en vigueur dans la période de son application par le droit ancien — qui conduirait aux résultats différents en comparaison avec l'application de la nouvelle et actuelle conception de l'ordre public. C'est toujours le terrain de la compétence de la loi nouvelle.

Quelle est la situation en dehors du principe fondamental de la non-rétroactivité et des exceptions justifiées à ce principe? Pouvons-nous aussi appliquer en droit international privé d'autres principes transitoires dont surtout le principe de l'effet immédiat? Rien n'y fait obstacle. Comme nous respectons en droit international privé le principe de la non-rétroactivité, bien qu'il ne figure pas dans ses dispositions, nous pouvons aussi reconnaître d'autres principes admis par la pratique et la théorie. Il est difficile de prévoir plus exactement quel sera le rapport réciproque de ces principes et leur application pratique dans une situation concrète. Conformément aux principes concernant les solutions transitoires admis dans la littérature contemporaine⁴⁶, tous les fondements de ces solutions doivent être subordonnés à la tendance générale adaptée aux besoins du moment du changement législatif, et non aux règles rigides établies *a priori*⁴⁷. Dans certaines situations ces besoins

⁴⁵ Quant à la jurisprudence allemande à ce sujet, cf. 6. MELCHIOR, *op. cit.*, § 41, p. 67.

⁴⁶ Cf. entre autres, G. A. BORDA, *Portée et limitations du droit transitoire*, *Mélanges P. Roubier*, vol. I, Paris 1961, p. 88 et suiv. où l'auteur souligne l'influence exercée par la situation politique et sociale sur la teneur des dispositions transitoires indépendamment des principes élaborés en théorie.

⁴⁷ Comme on a essayé de les formuler — suivant les conceptions traditionnelles — dans certains précis de partie générale, par exemple, A. WOLTER, *Prawo cy-*

prônent en faveur de l'application radicale des dispositions nouvelles, dans d'autres — ils exigent de laisser au droit abrogé une large compétence quant aux rapports juridiques nés sous son empire. Il en résulte dans certains cas la référence au principe de l'effet immédiat, dans l'autre par contre à la survie de la loi ancienne.

Il convient de rappeler que le principe de l'effet immédiat a été appliqué dans le domaine des règles de droit international privé par la jurisprudence polonaise de la période 1918-1939. Dans l'arrêt précité de la Cour Suprême du 26 octobre 1933⁴⁸, nous lisons que les dispositions du nouveau droit international privé peuvent être appliquées aux rapports nés avant son entrée en vigueur. On a ainsi créé la possibilité d'une large application de la loi nouvelle à tous les rapports qui se développent sur son propre «terrain temporel» sans égard au moment de leur naissance.

Dans la pratique européenne contemporaine, on rencontre aussi l'application immédiate des règles de conflit conformément aux besoins d'une situation concrète. On y parle même que la nouvelle règle de conflit spatiale est applicable dans le temps analogiquement à la règle de droit matériel dont la compétence est indiquée. C'est pourquoi, par exemple, les règles de conflit relatives au divorce sont toujours appliquées dans la pratique belge avec effet immédiat⁴⁹.

Il ne semble pas que la loi polonaise de 1965 se caractérise par une tendance à renfermer par ses dispositions tous les rapports juridiques, sans égard au moment de leur naissance. On a déjà signalé les différences insignifiantes entre l'ancienne et la nouvelle lois⁵⁰. Il est permis d'en conclure que l'application immédiate des dispositions nouvelles ne doit pas être considérée comme une règle bien qu'elle soit sans doute nécessaire dans certaines situations.

Sur la base de ces remarques générales il est possible de formuler les indications particulières suivantes. Pour l'appréciation de la validité des actes accomplis sous l'empire de la loi ancienne, les dispositions de celle-ci restent compétentes et notamment les points de rattachement

wilne, *zarys części ogólnej* [Droit civil, *précis de la partie générale*], 5^e éd., Warszawa 1977, p. 89 et suiv.; S. GRZYBOWSKI, *Prawo cywilne, zarys części ogólnej* [Droit civil, *précis de la partie générale*], Warszawa 1974, p. 65 et suiv.

⁴⁸ Publié dans «*Orzecznictwo Sądów Polskich*», 1934, n° 244.

⁴⁹ Cf. F. RIGAUX, *Droit international privé*, Bruxelles 1968, n° 181.

⁵⁰ Comme l'a fait remarquer le rapporteur du projet de la loi nouvelle, ses dispositions expriment plus d'une fois les principes antérieurement en vigueur. Quelquefois, la formule, en apparence nouvelle, exprime de façon plus claire et précise le principe qu'on pourrait aussi déduire des dispositions anciennes. Ainsi, on évite des conflits apparents entre les dispositions anciennes et nouvelles.

qu'elle prévoit pour la catégorie donnée de rapports, bien que l'action concernant les prétentions découlant de ces actes soit intentée dans la période où la loi nouvelle est en vigueur. La nouvelle loi ne sera pas, en principe, applicable aux rapports nés sous la loi ancienne et basés sur les actes juridiques. Quant à ces rapports, avant tout en matière d'obligations et de contrats de mariage, la loi ancienne continue à agir. Là, en revanche, où les rapports juridiques sont soumis directement aux dispositions de la loi, la loi nouvelle peut s'appliquer librement. Il en est ainsi avec les conflits de lois en matière de droit de la famille où les points de rattachement ont subi des modifications en comparaison avec la loi ancienne. Analogiquement, lorsque les parties désirent introduire des modifications dans leur rapport d'obligation déjà existant, mais né sous l'empire de la loi ancienne, ces modifications seront soumises aux règles de conflit de la loi nouvelle bien que — selon les principes mentionnés, concernant les rapports d'obligation — le contenu de ces rapports nés sous la loi ancienne continue, en général, à être soumis à la loi qui a présidé à leur naissance.

Il est impossible de passer sous silence à cette occasion le principe traditionnel de la protection des droits acquis. Nous nous rappelons parfaitement son rôle important dans la pratique et la théorie plus ancienne du droit international privé. Tout comme la clause d'ordre public était destinée à écarter l'application des dispositions étrangères, le principe mentionné protégeait en revanche les conséquences des rapports nés sur le terrain du système étranger ou propre contre l'influence de tous les changements.

Comme on le sait, le principe de la protection des droits acquis a été reconnu comme fondamental par beaucoup de théoriciens anciens, tels que, par exemple, Pillet⁵¹ et son école, Vareilles-Sommières⁵² et d'autres théoriciens français et un nombre de représentants de la théorie anglo-américaine. On sait que Story a déjà préconisé l'observation des *vested drights*, en la motivant par des considérations de la courtoisie internationale (*ex comitate*). A la fin du XIX^e siècle, la justification de ce principe change. Le terrain anglo-américain a été pénétré par différentes constructions européennes du problème. Dans la deuxième moitié du XIX^e siècle, elles sont développées entre autres par Holland, ensuite en Angleterre par A. Dicey qui a exercé une influence sur le principal partisan du respect de ce principe en Amérique du Nord — J. Beale.

On a parfois essayé de limiter la portée du principe de la protection

⁵¹ A. PILLET, *Principes de droit interiatonal privé*, § 296.

⁵² VAREILLES-SOMMIÈRES, *La synthèse du droit international privé*, vol. I, § 40 et suiv.

des droits acquis. Ainsi, par exemple, selon certains théoriciens allemands, il ne s'applique qu'aux «conflits mobiles»⁵³. La présentation de différentes nuances de cette sorte d'opinions serait certainement irréalisable et inutile car un grand nombre de théoriciens, anciens et modernes, se sont déjà occupés de l'importance du principe discuté sur le terrain des conflits dans le temps et dans l'espace⁵⁴.

Il faut, à cette occasion, rappeler que jusqu'au début du XIX^e siècle, le principe de la protection des droits acquis dans sa forme ultérieure n'apparaissait nulle part⁵⁵.

C'est au XIX^e siècle qu'un nombre d'auteurs qui — en se référant à la doctrine du droit transitoire — ont essayé de fonder cette conception en droit international privé. Malgré l'influence considérable de la construction discutée, cette tentative n'a pas réussi au même degré que sur le terrain des conflits de lois dans le temps où le principe de la protection des droits acquis jouissait de l'appui d'une grande partie de théoriciens de différents pays (ce qu'on appelle «école des droits acquis») et où il a exercé une influence directe sur un nombre de formules législatives. En comparaison avec cela, l'influence du principe discuté sur le terrain du droit international privé fut, comme on l'a dit, beaucoup plus modeste bien qu'il soit difficile de nier que dans un nombre de systèmes juridiques, la conception de la protection des droits acquis n'a pas perdu son actualité aussi en matière de conflits dans le temps des règles de droit international privé⁵⁶. Dans ce domaine, le droit international privé se distingue (dans certains pays au moins) par le conservatisme plus poussé que la doctrine du droit transitoire où cette construction est, en général, considérée comme définitivement abandonnée⁵⁷.

On pourrait aussi trouver certaines traces de la conception des droits

⁵³ Cf. à ce sujet les développements dans la monographie fondamentale de H. MÜLLER, *Der Grundsatz des wohlerworbenen Rechts im internationalen Privatrecht*, Hamburg 1935, p. 9.

⁵⁴ Cf. par exemple, A. CAVAGLIERI, *La teoria dei diritti acquisiti in due recenti operi di diritto internazionale privato*, Pisa 1905, et du MÊME AUTEUR, *Diritto internazionale privato e diritto transitorio*, 3^e éd., 1938, p. 89. Cf. aussi P. FEDOZZI, *op. cit.*, p. 123; G. DIENA, *op. cit.*, p. 358.

⁵⁵ Ce que souligne, entre autres, H. MÜLLER, *op. cit.*, § 26, p. 176 et suiv.

⁵⁶ Ainsi, par exemple, la doctrine espagnole dans les travaux de MIAJA DE LA MUELA et dans le manuel de J. A. C. SALCEDO, *Derecho internacional privado*, 2^e éd., Madrid 1976, p. 152.

⁵⁷ Sur l'anachronisme de la construction des droits acquis en droit transitoire, v. G. A. BORDA, *op. cit.*, p. 76. Dans la littérature polonaise la problématique de ce qu'on appelle «l'école des droits acquis» dans son ensemble a été analysée de façon critique dans mon ouvrage précité, *Konflikty w czasie...* [Les conflits dans le temps...], pp. 60 - 79.

acquis dans la littérature⁵⁸ et la jurisprudence⁵⁹ polonaises plus anciennes. Aujourd'hui, ce principe a perdu son importance, au moins comme principe général.

En connexion avec la problématique transitoire des règles de droit international privé, on pourrait encore poser d'autres questions. Il s'agit notamment de savoir s'il faut trancher les conflits dans le temps de ces règles selon les normes écrites (p.ex. les dispositions transitoires annexées d'habitude aux codes civils) ou bien selon le rattachement du rapport juridique donné à la loi ancienne ou nouvelle, en tenant compte des besoins de développement de ce rapport⁶⁰?

Il y a à ce sujet une différence entre le principe de la non-rétroactivité et les dispositions transitoires particulières. Ainsi, par exemple, l'art. 3 du code civil polonais a été admis en droit international privé comme règle transitoire générale. En revanche, les dispositions introductives de ce code concernent l'acte législatif entièrement distinct du droit international privé. On aperçoit une différence essentielle entre la loi polonaise de 1965 et, par exemple, la réglementation allemande de 1896 où les dispositions transitoires et celles de droit international privé ont été placées dans une loi (*Einführungsgesetz*). En outre, il est aujourd'hui généralement admis que les dispositions transitoires particulières annexées à un acte législatif déterminé ne concernent que celui-ci⁶¹. Cela est lié naturellement aux considérations différentes et, avant tout, à la possibilité de faire dépendre l'application immédiate de la loi nouvelle (en partie ou en totalité) de certaines considérations d'opportunité en connexion avec les besoins concrets du moment de la réforme législative.

Pour toutes ces raisons, il est impossible d'admettre comme règle que les dispositions transitoires du code civil s'appliquent aux différentes questions particulières concernant les conflits dans le temps des règles de droit international privé. Ainsi on laisse au juge la liberté d'appliquer la loi nouvelle au groupe plus ou moins large des rapports juridiques, pourvu que cela ne viole pas le principe fondamental de l'art. 3 du code civil.

⁵⁸ Cf. F. ZOLL, *op. cit.*, p. 97, qui — conformément à la conception de droit autrichien (§ 5 du code civil autrichien de 1811) — associe la protection des droits acquis à la protection des faits accomplis.

⁵⁹ Sur cette jurisprudence v. K. PRZYBYŁOWSKI, *op. cit.*, de 1935, p. 154 et *passim*.

⁶⁰ Comme il pourrait résulter de la jurisprudence belge précitée, concernant l'effet immédiat de la loi nouvelle.

⁶¹ Dans ce sens, entre autres, H. BATIFFOL, P. LAGARDE, *op. cit.*, vol. I, No 316, p. 400 avec référence à l'opinion de Roubier et Gavalda.

II. L'application en droit international privé des normes internes concernant les conflits dans le temps

1. Problèmes généraux

La problématique transitoire liée aux questions de droit international privé ne se borne évidemment pas à l'application dans le temps des règles de ce droit. Elle apparaît à plusieurs reprises par suite de la désignation comme compétent du système dans lequel les règles de droit civil ou de la famille viennent de changer. Dans ce cas, la désignation d'un système donné comme compétent ne conduit pas au résultat définitif, car le système désigné est marqué d'une non-uniformité qui exige une solution supplémentaire. La solution du conflit transitoire devient alors une partie du problème plus général qu'on appelle le problème de la loi non uniforme. Il s'agit notamment de savoir si dans un système indiqué comme compétent on doit appliquer ses règles anciennes (déjà abolies) ou nouvelles (actuellement en vigueur).

Deux sortes de solutions sont possibles à cet effet. Premièrement, on peut laisser la solution aux règles de la *lex fori* ou, deuxièmement, on peut la confier aux règles transitoires du système indiqué comme compétent. En droit international privé polonais, il est hors de doute depuis longtemps qu'on choisit la deuxième solution⁶². Elle est prévue par l'art. 5 de la loi polonaise portant droit international privé de 1965 selon lequel «lorsque dans l'Etat dont le droit est compétent, sont en vigueur plusieurs systèmes juridiques, le droit de cet Etat détermine lequel de ces systèmes sera applicable».

J'ai déjà relevé l'imprécision de cette formule au cours des travaux de codification sur ladite loi⁶³. Si la formule qui parle de plusieurs systèmes «en vigueur» est correct par rapport aux conflits interlocaux et peut aussi être justifiée relativement aux conflits interpersonnels (bien que, par rapport à ces derniers, il ne soit pas toujours exact de parler des droits «en vigueur»), elle n'est pas convenable aux conflits internes de lois dans le temps car le conflit transitoire ne regarde pas les règles simultanément en vigueur. Actuellement n'est en vigueur que

⁶² Ce principe, bien qu'il n'ait pas été exprimé dans les dispositions législatives, a trouvé son expression dans la jurisprudence polonaise de la période 1918 - 1939 entre autres, dans les arrêts de la Cour Suprême du 24 juin 1931 (Zbiór Urzędowy, Izba Cywilna, III, 2, 37/31) et du 26 octobre 1933 (Orzecznictwo Sądów Polskich, XIII, n° 244) concernant les règles étrangères de droit transitoire.

⁶³ M. SOSNIAK, *Uwagi do projektu polskiego prawa prywatnego międzynarodowego* [Remarques sur le projet de droit international privé polonais], «Nowe Prawo», 1965, n°s 7 - 8, p. 1011.

la loi nouvelle. La loi ancienne n'est assurément pas en vigueur, mais elle est admise à l'application selon telles ou autres directives transitoires.

Il faut, d'ailleurs, reconnaître que l'imprécision théorique mentionnée n'empêche pas en pratique d'appliquer régulièrement l'art. 5 précité.

Le principe qui confie la solution au droit transitoire interne du système indiqué a été, en général, admis en droit et dans la doctrine de plusieurs pays, par exemple, dans la doctrine française contemporaine⁶⁴, quoique non sans certaines réserves et exceptions⁶⁵. Des opinions rapprochées apparaissent également dans la théorie italienne la plus récente⁶⁶. On peut aussi déduire leur acceptation des énonciations reenontrées dans la littérature de droit international privé de certains pays socialistes⁶⁷. De même, la littérature allemande se place à ce point de vue en le déduisant de la conception d'application du droit étranger de la même façon que le juge du pays étranger donné (la conception de *Gesamtverweisung*)⁶⁸.

Dans le cadre de la loi polonaise, la prise en considération des dispositions transitoires étrangères est particulièrement justifiée en matière de droit successoral. L'article 34 de cette loi prévoit la compétence de la loi nationale du *de cuius* «au moment de son décès». Cela ne veut pas dire que la loi reconnaît comme compétentes les dispositions étrangères qui étaient en vigueur au moment du décès du *de cuius*: La loi polonaise n'indique comme compétentes que les règles de l'Etat dont le *de cuius* était ressortissant au moment mentionné. Parmi ces règles, il faut compter non seulement les règles substantielles concernant la succession, mais aussi les dispositions transitoires.

Il est permis d'en tirer la conclusion générale que les subdéterminations temporelles concernent toujours l'indication de la totalité du système de droit compétent et jamais une règle concrète de ce système.

⁶⁴ La liste des positions plus nouvelles est présentée par H. BATIFFOL et P. LAGARDE, *op. cit.*, vol. I, n° 332 (d'ailleurs partisans de ce point de vue). Quant à la relation entre les deux types des conflits de règles et l'application des règles transitoires étrangères en matière de conflits mobiles (cette matière est, comme je l'ai dit, exclue de cette étude) v. H. BATIFFOL, *Conflits mobiles et transitoires*, *Mélanges Roubier*, vol. I, Paris 1961, p. 39 et suiv.

⁶⁵ Cf. à ce sujet amplement Y. LOUSSOUARN, P. BOUREL, *op. cit.*, p. 306 et suiv.

⁶⁶ Cf. A. GIARDINA, *Les lois étrangères rétroactives en matière de mariage et de régimes matrimoniaux*, «Revue Critique de Droit International Privé», 1972, n° 3, p. 404 et suiv.

⁶⁷ D'ailleurs assez laconiques, comme par exemple dans le manuel tchèque de Z. KUČERA, *Mezinárodní právo soukromé*, Praha 1975, p. 145.

⁶⁸ Cf. G. MELCHIOR, *op. cit.*, p. 68, qui rapporte des exemples d'adoption de ce principe par la jurisprudence allemande de premières décennies du XX^e siècle.

Elles ne concernent donc pas non plus la question de savoir laquelle des règles successives dans le temps doit être appliquée, car cette question sera toujours tranchée par les règles transitoires étrangères.

2. Le problème de la non-rétroactivité

L'application des règles transitoires étrangères a-t-elle le caractère absolu? Dans la pratique et la théorie de différents pays, on a avancé la possibilité d'intervention de la clause d'ordre public en cas de rétroactivité prévue par le système de droit étranger⁶⁹. Les cas de non-application des règles étrangères rétroactives avaient lieu plus d'une fois par exemple dans la pratique française; bien qu'il soit difficile de parler d'une uniformité de la jurisprudence française à ce sujet⁷⁰.

En Allemagne, on a essayé d'introduire une graduation quant à la question. Les tribunaux allemands reconnaissaient en principe les solutions transitoires étrangères, même rétroactives, mais dans les cas où la rétroactivité violerait les droits acquis, ils refusaient d'appliquer ces solutions⁷¹.

Parfois, par exemple en Italie, on considère la rétroactivité du droit étranger comme «signal d'alarme» qui attire l'attention du juge sur le lien de la situation juridique donnée avec l'Etat dont les règles de droit matériel ont subi un changement⁷².

C'est déjà dans la période entre les deux guerres qu'en droit polonais il ne faisait aucun doute qu'en cas d'application du droit étranger il

⁶⁹ A ce sujet cf., entre autres, les opinions dans la littérature anglaise E. A. MANN, *The Time Element in the Conflict of Laws*, «British Yearbook of International Law», 1954, p. 217 et suiv. Le problème est aussi souligné par A. GIARDINA dans son article précité de 1972, p. 417.

⁷⁰ Cf. par exemple, la note de Ch. GAVALDA sous l'arrêt du Tribunal de la Seine du 10 octobre 1952, publié dans la «Revue Critique», 1954, p. 165. Dans cet arrêt, on a reconnu comme rétroactif et en conséquence applicable l'art. XI § 1^{er} des dispositions introductives du décret polonais portant droit des régimes matrimoniaux de 1946. L'arrêt de la Cour d'Appel du 2 juillet 1954, publié dans la «Revue Critique», 1954, p. 810, s'est prononcé contre l'opinion que la seule rétroactivité du droit étranger puisse engendrer son éviction en France pour la raison d'ordre public. Mais dans un autre arrêt du 3 mars 1965, la Cour d'Appel de Paris a constaté que la rétroactivité de la loi étrangère reste en contradiction avec l'ordre public français (Cf. «Revue Critique», 1965, n° 3, p. 536). Comme on le voit, il ne manque pas en matière discutée des divergences considérables même dans le même pays.

⁷¹ Bien que le principe de protection des droits acquis n'ait nulle part été formulé dans la législation allemande en vigueur. Quant aux exemples de la jurisprudence allemande plus ancienne. v. G. MELCHIOR, *op. cit.*, §§ 43 - 44 (pp. 69 - 70).

⁷² Ainsi A. GIARDINA dans l'article précité de 1972, p. 424.

faut l'appliquer dans la même étendue que le ferait le tribunal de l'Etat étranger donné. Le tribunal polonais ne pourrait donc appliquer la disposition étrangère abrogée rétroactivement dans l'Etat dont le droit est indiqué comme compétent⁷³. Le refus d'application des dispositions transitoires étrangères en cas de leur rétroactivité serait d'autant plus sans aucun fondement que dans le système actuel du droit civil polonais, l'art. 3 du code civil admet expressément l'effet rétroactif lorsqu'il résulte «du texte ou du but de la loi».

3. Autres problèmes transitoires

A côté de la conception présentée qui recommande de s'adresser aux directives transitoires étrangères, est également connue, mais assez rarement appliquée, la construction de ce qu'on appelle de pétrification des situations juridiques (*Versteinerung*), c'est-à-dire leur pétrification dans la forme qu'elles ont eu au moment du «détachement» de leur Etat d'origine.

La susdite construction conduit au refus d'application de tout droit étranger nouveau⁷⁴. Ainsi, lorsque cette construction apparaît dans la littérature contemporaine, elle ne trouve l'application qu'aux groupes des rapports juridiques déterminés. Makarov, par exemple, l'admettait seulement pour les obligations délictuelles et pour l'appréciation de la capacité matrimoniale. Il ne l'admettait pas dans d'autres domaines, en matière de succession par exemple⁷⁵. Dans cette conception on met l'accent sur le lien particulier du rapport juridique déterminé avec un Etat étranger ou bien avec l'Etat du for.

Comme nous admettons l'application des principes transitoires étrangers, la question se pose comment agir à défaut de cette sorte des principes pour la situation donnée? Dans la littérature allemande⁷⁶, on

⁷³ Ainsi l'arrêt précité de la Cour Suprême du 26 octobre 1934. On a souligné expressément dans cet arrêt que la rétroactivité des dispositions internes étrangères ne pouvait être considérée comme incompatible avec les principes fondamentaux de l'ordre juridique polonais.

⁷⁴ Cf. avant tout W. WENGLER, *Skizzen zur Lehre von Statutenwechsel*, «*Rabels-Zeitschrift für Ausländisches und Internationales Privatrecht*», 1958, p. 544 et suiv. Cf. aussi dans la littérature anglaise KNITTEL, *The Temporal Dimension in the Conflict of Laws*, «*British Yearbook of International Law*», 1964, p. 105 et suiv. Cette conception est aussi présentée par A. GIARDINA dans son article précité de 1972, p. 421.

⁷⁵ Cf. A. N. MAKAROV, *Grundriss des internationalen Privatrechts*, Frankfurt a/M. 1970, p. 91.

⁷⁶ Par exemple L. RAAPE, *Internationales Privatrecht*, 5^e éd., Berlin 1961, p. 13 et aussi FIRSCHING, *Internationales Privatrecht*, 1974, p. 69 et suiv.

applique alors le principe de l'«état de fait fermé». Si l'état de fait déterminé ou la situation juridique déterminée ont été «fermés» sous l'empire de la loi ancienne, on les soumet intégralement à ses dispositions. Dans le cas contraire et par rapport aux faits nouveaux concernant les situations juridiques existant depuis longtemps (par exemple, les modifications du contrat), on applique la loi nouvelle.

La loi polonaise ne fournit pas d'indications en cas d'absence des dispositions transitoires étrangères. Il existe ainsi une grande liberté pour le juge à ce sujet. Malgré cela, il ne semble pas recommandable d'appliquer dans ce cas des constructions théoriques spéciales comme, par exemple, celle qui a été présentée ci-dessus. En outre, il faut prendre en considération le fait qu'en droit transitoire — comme je l'ai relevé plus haut — il est impossible de parler des règles rigides établies une fois pour toutes (sauf de tels principes fondamentaux comme, par exemple, le principe de la non-rétroactivité), des règles qui pourraient être appliquées sans égard au moment concret du changement législatif et indépendamment du territoire concerné. C'est pourquoi, à défaut des dispositions transitoires internes de l'Etat donné, le juge polonais doit s'adresser aux principes transitoires généraux de cet Etat qui lui paraissent les plus convenables à l'application dans le cas et au moment donnés et baser sur eux le choix entre l'ancienne et la nouvelle loi matérielle étrangère.

Polish Court Judgements in International Civil Law Cases

by MACIEJ TOMASZEWSKI

Incapacitation

Application for incapacitation of a citizen of the United States of America having his domicile in Poland. — Lack of jurisdiction of Polish courts.

Supreme Court, Civil Chamber. Decision of November 6, 1978 (IV CZ 127/78) concerning the application of Eugenia U. for the incapacitation of Stanisław W. (Decisions of the Supreme Court, Civil Series, 1979, No. 7—8, item 155).

Eugenia U., daughter of Stanisław W. citizen of the United States of America domiciled in Poland applied to the Voivodship Court in Rzeszów for the incapacitation of her father in order to ensure his livelihood in the future and to protect him against squandering his money. The Voivodship Court rejected the application because of the lack of national jurisdiction. The applicant submitted the matter to the Supreme Court which withheld the decision of the Voivodship Court and stated, among other things, the following:

"In her complaint the applicant maintains that the party to the case has his domicile in Poland and that this circumstance is of essential importance in dealing with the case. In her view national jurisdiction is applied by analogy to this kind of cases, in the same way as in cases of succession. A citizen of another state having his permanent residence in Poland is subject to national jurisdiction. Hence, she considers that there was a breach of Articles 1099 and 1106, paragraph 1 of the Code of Civil Procedure.

"These objections and the legal arguments voiced in their support are unwarranted. They have no basis in the laws in force. Pursuant to Article 1106, paragraph 1 of the Code of Civil Procedure, which is the sole provision applying to the case, matters concerning the incapacitation of Polish citizens belong to the exclusive jurisdiction of Polish courts; Polish courts are also competent to

deal with cases of stateless persons if they have their domicile in Poland. Apart from that latter case the problem of domicile of a person in Poland has no bearing in the light of Article 1106, paragraph 1 of the Code of Civil Procedure. That is why it can be stated that the arguments contained in the complaint notwithstanding, the connecting factor of domicile itself is of no essential importance when deciding about the question of exclusive jurisdiction of a Polish court in a case concerning incapacitation.

"The case must, however, be considered from still another point of view.

"The provision of Article 1106, paragraph 1 of the Code of Civil Procedure deals with the problem of exclusive jurisdiction. The consequence of that fact is, in particular, that a decision by a foreign court incapacitating a Polish citizen or a stateless person domiciled in Poland, could have no legal, material or procedural effects in Poland. Such a decision by a foreign court could not, in the light of Article 1146, paragraph 1, alinea 2 of the Code of Civil Procedure, be recognized in Poland, because one of the premisses of recognition is the fact that the case does not belong, according to Polish law or to an international treaty, to the exclusive jurisdiction of Polish courts or courts of a third state. However, there is another consequence arising from the exclusive jurisdiction.

"It results from the provisions of international civil procedure, that apart from the category of exclusive jurisdiction one knows also of the simple concept of 'national jurisdiction'. In the light of this distinction the question arises as to whether the mere fact that the Code of Civil Procedure deals as regards a specific kind of cases only with the problem of 'exclusive jurisdiction' means that a Polish court can in this sphere rule only in such cases which are reserved to its exclusive jurisdiction, with the exclusion of all other possible cases.

"In this respect attention must be paid to the fact that in the doctrine of international procedure there is, apart from the concept of exclusive national jurisdiction and national jurisdiction (facultative, parallel), also the concept of excluded jurisdiction (*iurisdictio exclusa*). It can be admitted that excluded jurisdiction is, as a rule, the result of a legally regulated national jurisdiction to a certain extent in that sense, that if the legislator submits a specific category of cases to the exclusive jurisdiction because of specific connections (for instance nationality), then, in other cases (for instance, concerning foreigners and applying the same connection, namely nationality) he excludes national jurisdiction as regards such other persons. In this respect, there is a fundamental difference between the effects in the field of jurisdiction — between 'national jurisdiction' which is at the same time a facultative jurisdiction, not excluding in principle the jurisdiction of the courts of another state — and the 'exclusive national jurisdiction', whose counterpart is outside that scope the excluded jurisdiction (the exclusion of national jurisdiction).

"The use by the legislator of the construction of 'exclusive national jurisdiction' means not only that some cases had been reserved for the jurisdiction of Polish courts with the exclusion of the courts of other states, but has also another meaning, namely, it constitutes in fact a negative definition of the scope of competence of Polish courts in cases involving so-called foreign elements. This means that a Polish court is entitled to rule in the sphere of specific legal relationships (specific kinds of cases) only and exclusively within the scope provided for in the norm regulating exclusive jurisdiction.

"However, this interpretation applies only to these cases, when the legislator regulates within the scope of specific cases only the question of exclusive

competence, without determining, as is the case in the situation foreseen in Article 1066, paragraph 1 of the Code of Civil Procedure, the norm concerning 'national jurisdiction'. A different regulation is contained in Article 1108, paragraphs 1 and 2 of the Code of Civil Procedure whose provisions deal in a different manner with the situations subjected to national jurisdiction and the situations subjected to exclusive national jurisdiction.

"In the present legal situation, the extension of the national jurisdiction of the Polish courts in cases concerning incapacitation to other cases over and above those covered by exclusive national jurisdiction, would lead to a broadening of the national jurisdiction unintended by the legislator and unjustified by considerations of international nature.

"In a situation covered by Article 1106, paragraph 1 of the Code of Civil Procedure, i.e. by exclusive jurisdiction based on the connecting factor of nationality, there is no ground to admit that there is a need to invoke the doctrinal construction of jurisdiction based on the necessity to ensure the proper care, at least on a provisional and emergency, basis, of a foreigner, in relation to whom jurisdiction is excluded. That is why in this concrete case concerning incapacitation the Voivodship Court was correct in not accepting the request of the applicant to issue a temporary injunction within the framework of protection in matters of property (the bank account in foreign exchange of the participant in the proceedings).

"For all these reasons it is to be concluded that in the light of Article 1106, paragraph 1 of the Code of Civil Procedure, cases concerning incapacitation of a citizen of a foreign state are not subject to the national jurisdiction of Polish courts, even when the person involved had his or her domicile in Poland.

"From a general point of view, it can be said that in the field of provisions concerning international civil procedure it is not possible to rule out, as a matter of principle, the application in specific cases of an interpretation of provisions by way of careful analogy, as is the case as regards the remaining provisions of the Code of Civil Procedure. However, because of the nature of the provisions concerning national jurisdiction and, especially, the provisions regulating 'exclusive national jurisdiction', one must exclude, in principle, the admissibility of extending the category of cases, which could be subject to national jurisdiction, exclusive national jurisdiction or its exclusions, as far as Polish courts are concerned.

"Finally, it must be stated that in this case one does not deal with the problem of double nationality, which in the legislations regulating it rises particular questions connected with national jurisdiction".

Marriage

Marriage contracted before the Consul of Equadore in Moscow. Action for the determination of the existence of marriage. — The premises of validity of a consular marriage. — The application of the law of the state in which the marriage was contracted.

Supreme Court, Civil Chamber. Decision of January 22, 1980 (II CZ 1/80) concerning an action brought by Janusz Z. against Maria

Patina P. for the determination of the existence of marriage. (Decisions of the Supreme Court, Civil Series, 1980, No. 10, item 188).

On November 9, 1977, Janusz Z. (Polish citizen) and Maria Patina P. (citizen of Ecuador) declared before the Consul of Ecuador in Moscow that they want to get married, whereupon a marriage certificate was immediately issued. The validity of that marriage was questioned by Polish institutions, as a result of which Janusz Z. applied to the Voivodship Court in Wrocław asking the court to determine that his marriage existed also in the light of the law in force in Poland. The court however rejected the application claiming the inadmissibility of court procedure.

As a result of a complaint by the applicant, the Supreme Court overruled the decision of the Voivodship court, giving for it the following reasons:

"The questioning of the validity of a marriage rises doubts as to whether the marriage of the parties exists in the light of the law in force in Poland. The plaintiff has therefore a legal interest in obtaining a statement by a competent organ to the effect that when concluding that marriage all necessary conditions required by the law have been met. From the fact that Article 1, paragraph 2 of the Family Code expressly permits to bring an action concerning the determination of the non-existence of a marriage, the Voivodship Court arrived however, at an erroneous conclusion that a party can prove the existence of a marriage only through an administrative procedure concerning the production of a national act reproducing a foreign marriage certificate (Article 63, alinea 1 of the law on Civil Status Registry). The contradiction results both from the principle that wherever the law opens up the possibility to ask for a negative determination there is no obstacle to ask for a positive determination as well as — and even above all — from the connection of Article 1 of the Family Code with the provisions of Article 425 of the Code of Civil Procedure, which authorizes a married person to apply also for the determination of the existence of marriage.

"The application for determination is, however admissible only when the existence of marriage does not result from the mere presence of a marriage certificate, and the law does not provide for an administrative procedure which could lead to the same end (Article 1 and Article 2, paragraph 3 of the Code of Civil Procedure). The scope of examination by a superintendent register (supervising organ) in a procedure of the type "act-registration" as regulated in Article 63 alinea 1 of the Decree of June 8, 1955 on Civil Status Registry ("Journal of Laws" No. 25, item 151 as amended) is restricted to the determination as to whether the submitted extract from the registry act is a civil status registry act in the light of foreign law. However, a marriage certificate constitutes proof that a marriage was actually contracted, but is not a premise of its validity. This means that the refusal to deliver in this particular procedure a Polish certificate reproducing a foreign marriage certificate of a Polish citizen with a foreign citizen does not exclude the possibility to request, within the framework of a civil process, for a determination that the marriage, contracted by the parties in conformity with the conditions required by the national law of each of them and in the form prescribed by that law or in conformity with the law in force in the state where

the marriage was contracted, (Article 14 and 15 of the Act of November 12, 1965, private international law, "Journal of Laws", No. 46, item 290) exists also in the light of the law in force in Poland. The adjudgement as to whether there was no breach of so conceived premisses of marriage validity (Article 16 of the above mentioned Act) was reserved in Articles 425 and 1100 of the Code of Civil Procedure to the civil courts. A verdict determining the existence of marriage, valid *erga omnes* (Article 435 of the Code of Civil Procedure) — is therefore subject to registration in the registry books. [...]

"When examining the case the Voivodship Court must deal, in the first place, with the requirements concerning the form of marriage set forth by the law of the state in which the marriage was contracted. From that point of view the complaint could be in principle considered as justified in substance (Article 15, paragraph 2 of the international private law — substitution in favour of *lex loci*) if according to the law in force in the FRSSR a citizen of the Republic of Equador had been entitled to contract a marriage in the Consulate of Equador in Moscow with a Polish citizen. What matters is therefore not only whether a foreign representation had the authority given to it by its own state to act in that capacity, but also whether the state on whose territory that representation acts permits such practice. [...]"

Guardianship of a Minor

Guardianship established in the USSR over a minor Polish citizen.
— Action for maintenance in favour of a minor brought in Poland against parents. — Agreement between Poland and the USSR on legal assistance and legal relations in civil, family and penal cases of December 28, 1957.

Supreme Court, Civil Chamber. Resolution of September 24, 1979 (III ZCP 53/79) in the case of the action brought by Danuta S. acting through her guardian Anna K. against Michał S. and Bronisław K. concerning maintenance (Decisions of the Supreme Court, civil series, 1980, No. 1, item 6; see also critical comments by A. Mączyński, "Państwo i Prawo", 1980, No. 10, p. 137 ff.).

A minor Polish citizen, daughter of divorced parents, went as a very young child to the Soviet Union to live with her grandmother from the mother's side and remained there for many years, against the will of her father. The appropriate organ of the Ukrainian SSR confirmed the grandmother in her capacity as the guardian of the child. Meanwhile, the father of the girl, living in Poland and in possession of his parental authority, obtained a binding decision by a Polish court ordering the grandmother to return the child to him. In spite of the fact that the decision by the Polish court was recognized in the USSR and that a USSR court ordered its compulsory execution, the decision was not carried out. On the other hand, the grandmother acting as a guardian

brought an action to the district court against both parents for maintenance in favour of the child. The district court rejected the action claiming that the grandmother can not ask for maintenance from the father, since she keeps the child against his will. Examining the appeal of the plaintiff, the Voivodship Court addressed, pursuant to Article 391 of the Code of Civil Procedure, the following legal question to the Supreme Court:

"Can a guardian established for a minor child, in accordance with Article 37 of the Agreement between Poland and the USSR on legal assistance and legal relations of December 28, 1957 — "Journal of Laws", 1959, No. 32, item 147 (irrespective of the fact that the father residing in Poland has full parental authority) have the power to act on behalf of the child in an action involving maintenance against the parents in a situation when by a binding decision of a Polish court the guardian was ordered to return the child to her father, when a USSR court permitted the compulsory execution of that decision on the USSR territory pursuant to Article 53 of the Agreement, when the decision was not being carried out and, in particular, the guardian did not lose the right to represent the child after the entry into force of the decision of the USSR court."

In his reply the Supreme Court stated the following:

"The appointed guardian of a minor Polish citizen residing in the USSR, pursuant to Article 37 of the Agreement between Poland and the USSR on legal assistance and legal relations in civil, family and penal cases of December 28, 1957 ("Journal of Laws", 1958, No. 32, item 147), in a situation when the parents are invested in the parental authority and when an action has been brought against them for maintenance in favour of that minor, must be treated as an *ad hoc* guardian appointed on the basis of Article 99 of the Family Code."

In the reasons for this resolution the Supreme Court mentioned the following:

"[...] Polish law provides for the possibility of restricted representation of a minor, in spite of the fact that the parents enjoy parental authority, among other things, in order to permit the action against the parents in the name of the minor. Such a representative with restricted scope of action is an *ad hoc* guardian provided for in Article 99 of the Family Code. In these circumstances the grandmother can be treated as such a guardian, since an *ad hoc* guardian of the minor was not appointed by a Polish guardianship court.

"This assessment cannot be modified by the fact that the respondent was not able — in spite of his best efforts and because of the resistance of the grandmother — to bring back the child to the parental home. For, irrespective of the reasons why the child is not living with her parents, they must provide for her livelihood. In particular, the refusal to provide maintenance by the parents cannot, in this particular case, constitute some kind of punishment inflicted on the grandmother, who acting against the law prevents the return of the child to her parents."

Sea Transport

The carriage of cargo on vessel placed on time-charter. — The carrier not mentioned in the bill of lading. — The importance of reference in the bill of lading to the charter-party. — The lack of solidary responsibility of the ship's operator and the time charterer.

Supreme Court, Civil Chamber. Decision of March 31, 1978 (II CR 490/78) in the case involving an action brought by the Insurance and Reinsurance Company "Warta" in Gdynia against the foreign "Artagan Shipping Co" for damages (Decisions of Polish Courts and Arbitration Commissions, 1979, fascicule 4, item 75, with critical comments by J. Łopuski).

The plaintiff, i.e. the "Warta" Company invoked the fact that pursuant to Article 300 of the Maritime Code it had entered into the rights of the Polish Foreign Trade Company "R" as the possessor of the bill of lading and asked that the defendant, i.e. the "Artagan" Company be sentenced to pay damages for the non-delivery in full of the goods specified in the bill of lading. The defendant Company claimed that it did not conclude a contract of carriage which was at the basis of the plaintiff's claims, for during the time of carriage the ship "Artagan" which constituted its property was placed on a time-charter to the S. and K. Company in London, which was not a party to the dispute. The bill of lading did not mention the name of the carrier, referring only to the charter-party. After the rejection of the complaint by the Voivodship Court in Gdańsk, the plaintiff applied for a revision to the Supreme Court which, in his decisions of August 26, 1976, (II CR 272/76) overruled the verdict, referring the case to the Voivodship court for reconsideration. The Supreme Court expressed the view that the reference in the bill of lading to the charter-party was tantamount to the indication of the charterer as the carrier in the understanding of Article 127, paragraph 2, alinea 1 of the Maritime Code.

Having examined the case for the second time, the Voivodship court rejected the complaint. The plaintiff applied again to the Supreme Court which dismissed the appeal. In the reason given for his verdict the Supreme Court stated the following:

"[...] The Maritime Code, aiming at protecting the interests of the creditor in a situation when there is uncertainty as to the person of the debtor, defined in a different way the principles of responsibility when it is based on the bill of lading or when it arises from other obligations contracted by the master of the vessel in the scope of its exploitation. In the first case, if the carrier was not mentioned in the bill of lading the responsibility is exclusively that of the ship's operator (Article 127, paragraph 2 of the Maritime Code); in the second

case, when the master failed to declare to the creditor when contracting the obligation that he acted in the name of the charterer, the responsibility falls upon the ship's operator and the charterer jointly and severally (Article 184, paragraph 3 of the Maritime Code). This time we are dealing with the first case and, since the master (acting as the agent) when drawing up the bill of lading indicated the carrier, it is only the carrier who bears responsibility".

Sea Transport II

Responsibility for damage to transported cargo. — The choice of law. — The interpretation of the US Carriage of Goods by Sea Act of 1936.

Supreme Court, Civil Chamber. Verdict of Seven Judges of the Supreme Court of April 21, 1979 (III CRN 305/78) in the case arising from an action by the Insurance and Reinsurance Company "Warta" against the Shipping Company I.D. in Panama and the Insurance Company W. in London for payment (Decisions of Polish Courts and Arbitration Commissions, 1980, fascicle 5, item 82, with critical comments by J. Łopuski).

The I.D. Company, shipowner of the "Santa Clio" contracted an obligation to carry from the USA to Szczecin for the Foreign Trade Company "R" (the consignee) a load of 11,000 tons of oats fodder. In proof of the reception of the cargo on board the ship a bill of lading was drawn up, the effects of which were subject to the US Carriage of Goods by Sea Act of 1936. After arrival to Szczecin, during the unloading operations, the ship was ballasted and the tanks filled with water. During the ballasting operation 203 tons of oats were soaked.

The damage to the receipt of the bill of lading "R" was compensated by the Insurance and Reinsurance Company "Warta", which entered in the rights of the former creditor and applied for a verdict of joint and several compensation by virtue of regress from the shipowner, as responsible for the damage and from his London insurer.

The case was completed December 2, 1977 by a binding verdict of the Supreme Court which dismissed a revision from the verdict of the Voivodship Court of August 23, 1977, which rejected the action. However, as a result of an extraordinary revision filed by the Attorney General of the Polish People's Republic, the Supreme Court overruled the verdict of December 2, 1977 and the verdict of the Voivodship Court of August 23, 1977 and referred the matter for reconsideration to the Voivodship Court.

In reasons given for its ruling the Supreme Court stated the following:

"The US Carriage of Goods by Sea Act of 1936 which applies to this contract of carriage, imposes on the carrier the obligation to carry out the transport, storage, preservation and discharge with due diligence (paragraph 3, alinea 2 of the Act). All clauses and agreements liberating the carrier or the ship from liability for loss or damage incurred by the goods or in connection with the goods because of neglect, fault or infringement of the duties or obligations provided for in this paragraph or limiting such liability otherwise as provided for by the Act are null and void (paragraph 3, alinea 8 of the Act). It frees, however, the carrier from liability for loss or damage resulting from an act, neglect or fault of the master, crew men, pilot or persons employed by the carrier in the navigation or administration of the ship (paragraph 4, alinea 2 (a) of the Act).

"The interpretation of the provisions referred to and functionally interconnected, as rightly pointed out by the plaintiff, constitute a comprehensive and integrated whole, as far as the basis of liability of the carrier for damage is concerned, must lead to the conclusion that although the nautical fault of the crew (in the navigation or administration of the ship, comp. also Article 156, paragraph 2, alinea 1 of the Maritime Code), exculpates the carrier, but this does not apply to his obligation to exercise due diligence of the goods — pursuant to paragraph 3, alinea 2 of the Act — to carry out properly carriage, storage, preservation and discharge.

"The wrong ballasting of the ship constitutes neglect in the field of its administration and is covered — because of the nautical aim of ballasting — by the exception provided for in paragraph 4, alinea 2 (a) of the Act. However, if a nautical fault (in this case — wrong ballasting) were to result in a damage to the cargo, it is necessary to examine whether and to what extent the carrier neglected to carry out his duties to protect the cargo in connection with this fault. This applies above all to the possibility to prevent faults by the crew and to restrict the ill-effects of such faults, as a result of which the exception provided for in paragraph 4 must be restricted accordingly.

Recognition of a Foreign Judgement I

Adoption pronounced in the USA. — Premises of recognition. — Lack of exclusive jurisdiction of Polish courts. — Conformity with fundamental principles of the legal order of the Polish People's Republic. — The inadmissibility of examination of the merits of a foreign judgement.

Supreme Court, Civil Chamber. Decision of April 21, 1978 (IV CR 65/78) in the case submitted by Rozalia S. and Bronisław S. with the participation of Aniela S. and Józef S. concerning the recognition of a judgement by a foreign court (Decisions of the Supreme Court, civil series, No. 1, item 12).

Rozalia and Bronisław S., married and domiciled in Chicago, USA applied to the Voivodship court in Nowy Sącz for the recognition as effective on the territory of the Polish People's Republic of an order of the District Court of Cook County, State of Illinois, of January 17, 1975, concerning the full adoption (*adoptio plena*) of a minor Polish

citizen, Rozalia S., born in 1961, daughter of Józef S. and Aniela S. The court rejected the application motivating its decision by the fact that pursuant to Article 22, paragraph 2 of the Polish private international law, when deciding on adoption it is necessary to observe the requirements of Article 118 of the Polish Family and Guardianship Code. In the opinion of the Voivodship Court, this condition had not been met by the District Court of Cook County, because neither the adopted girl of 14 years of age nor her mother had expressed their consent. Only the father agreed, whereas the expression of agreement by the mother in the proceedings concerning the recognition of the act of adoption constituted no proof that such agreement existed at the date when the adoption was pronounced. Furthermore, the possibility of recognizing the order of the District Court of Cook County is excluded, according to the Voivodship Court, by the clause of public policy (Article 1146, paragraph 1, point 4 of the Code of Civil Procedure).

The applicants lodged an appeal to the Supreme Court, which changed the decision of the Voivodship Court and recognized as effective on the territory of the Polish People's Republic the order of the District Court of Cook County concerning the adoption of Rozalia S.

Giving reasons for its decision the Supreme Court stated the following:

"Pursuant to Article 1101, paragraph 2 of the Code of Civil Procedure the jurisdiction of Polish courts, in cases involving adoption and concerning persons who include at least one person with Polish citizenship, is exclusive only in such cases, when the adopter and adopted have their domicile in Poland. The Voivodship Court established that applicants (adopters) are domiciled in Chicago. Thus, in this case there is no negative premise of recognition of a foreign judgement, as provided for in Article 1146, paragraph 1, point 2 of the Code of Civil Procedure.

"[...] The order, which is to be recognized, states that the father of the child gave his consent to the adoption and mentions also the reasons why the consent by the mother was considered unnecessary. It can therefore be concluded that the law of the State of Illinois includes both parents of the adopted child, the same as in Article 586 of the Code of Civil Procedure, into the group of participants in the procedure. The participant person Aniela S. was not deprived of her possibility of defence, for she could express herself on the matter of adoption of her daughter, and she did so in a letter addressed to the Court. Her consent was not taken into account when the order was pronounced because the letter arrived after the closure of the proceedings.

"From the reference in the justification to point 5, paragraph 1, Article 1146 of the Code of Civil Procedure it can be construed that, in the Voivodship Court's opinion, the clause of public policy excludes the recognition of the order of the District Court of Cook County. However, the provision of Article 1146 paragraph 1, point 5 of the Code of Civil Procedure cannot be interpreted as tantamount to the introduction of a requirement, according to which foreign judgements must be in full accord with all corresponding provisions of Polish law. This provision

requires accord only with the fundamental principles of the legal order of the Polish People's Republic and these must be understood as including the constitutional principles, as well as the principles governing the various spheres of law, especially civil, family, labour and procedural law.

"As far as family law is concerned, it is the welfare of the child which is of paramount importance; a child can be adopted only when this is for his own good (Article 114, paragraph 1 of the Family and Guardianship Code). The Voivodship Court had not determined that the adoption pronounced January 17, 1975 violated that principle.

"On the other hand, the evidence gathered in this case indicates that Rozalia S. accepted the adoption and had no intention to sever the bonds with her new family which had been hers for three years.

"Finally, the Voivodship Court was wrong when accepting that the mother and the child did not express their consent to the adoption, as called for by Article 118, paragraph 1, of the Family Code, and without which the act of adoption could not be performed, pursuant to Article 22 of the international private law. The Voivodship Court did establish that the mother of Rozalia S. agreed to the adoption of her daughter by the applicants and confirmed that agreement in the course of the proceedings [concerning the recognition of the adoption order — note by M. T.] The fact that the letter did not reach the foreign court before the closure of the proceedings cannot impair the mother's consent. As far as the consent of the adopted child is concerned, she expressed it by her presence at the foreign court. Since 3 years have elapsed from that event, and since the relations between the adopted child and the adopters are shaping up well, it is not possible to interpret the behaviour of the adopted child in any other way.

"As laid down by the jurisprudence of the Supreme Court, the Polish court which pronounces itself on the recognition of a foreign judgement, does not examine the substantive merits of that judgement (Decision of November 5, 1975, I CR 625/75, OSNCP 1976, item 215). The recognition of the adoption order of the District Court of Cook County cannot be therefore made dependent on a appreciation as to whether the consent provided for in Article 118, paragraph 1 of the Family and Guardianship Code was expressed in a due form and as to whether the court ruling on the adoption had at its disposal before the closure of the proceedings sufficient proof in this matter, when in fact such a consent existed".

Recognition of a Foreign Judgement II

Divorce granted in the USA. — The legal interest in an application for recognition. — Exclusive jurisdiction of Polish courts as a negative premise of recognition. — The concept of domicile. — The change of domicile. — The moment determinant of the establishment of the premises of recognition of a foreign judgement.

Supreme Court, Civil Chamber. Decision of July 15, 1978 (IV CR 242/78) in the case of the application by Zofia P. concerning the recognition of the judgement of a foreign court. (Decisions of the Supreme Court, Civil Series, 1979, No. 6, item 120).

Zofia P. applied to the Voivodship Court in Katowice for the recognition of a decree by the District Court of Cook County, State of Illinois, USA, of April 4, 1977, dissolving the marriage of Zofia P. with Piotr P. The Voivodship Court rejected the application, stating in the reasons given for it that the applicant had to start divorce proceedings before a Polish court, since she was domiciled in Poland and that, furthermore, she had no legal interest in asking for the recognition of the divorce.

As a result of an appeal lodged by the applicant, the Supreme Court overruled the decision of the Voivodship Court and referred the case to it for reconsideration.

Giving reasons for its decision the Supreme Court stated, among other things:

"The complainant is right when objecting against the contention by the Voivodship Court that there is no legal interest. Pursuant to Article 1147, paragraph 1 of the Code of Civil Procedure, each person having in it legal interest can apply for the recognition of a judgement of a foreign court. In the light of this provision the complainants are in each case authorized to ask for the recognition of the judgement of a foreign court, and without a need to demonstrate in a concrete way the existence of a legal interest, parties to a process and all other persons who participated in it in the capacity of principal and accessory interveners and their successors. With respect to parties in a divorce proceeding this principle means that the authority is granted in each case to the divorced spouses. Other persons must demonstrate the existence of a legal interest when asking for the recognition of a judgement of a foreign court.

"The rejection of the application for that reason is therefore unjustified. On the other hand, the solution of this specific case depends, above all, on the elucidation whether the decree of the USA divorce court concerning the participants in the proceedings can be recognized by a Polish court in the light of Article 1146, paragraph 1, point 2 of the Code of Civil Procedure, which as one of the premisses of recognition of a foreign court judgement considers a determination that, pursuant to Polish law or international treaty, the case does not belong to the exclusive jurisdiction of Polish courts or courts of a third state. As it results from the wording of the above mentioned provision, reference must be made in this case to Article 1100, paragraph 2 of the Code of Civil Procedure, which provides for the exclusive jurisdiction of Polish courts in matrimonial cases, provided that both spouses have their domicile in Poland. It is no accident that the legislator accepts as the criterion of jurisdiction (jurisdictional connecting factor) in these cases 'the place of domicile' and not the 'place of simple residence' (comp. for example, Article 1103, p. 1 of the Code of Civil Procedure). This can be explained by the desire to base national jurisdiction on a firm and stable factual and legal foundation. There is no ground for admission that the concept of 'domicile' and 'place of domicile' are in all legal systems univocal. However, in this particular case it is the meaning of these concepts under Polish law which is of decisive importance. For, the principle (though admitting exceptions) is, that also in the sphere of procedural law — in the case of both civil and strictly

procedural law — the qualification of legal concepts is carried out on the basis of the law in force in the state of the adjudging court. And since the provisions dealing with international civil procedure fail to define the concept of 'domicile', it is necessary to reach for the provisions of the civil code, namely to Article 25 of the Civil Code, according to which the place of domicile of a natural person is the place where that person remains with the intention of permanent residence."

"Such an interpretation of this provision leads to the conclusion that the place of domicile constitutes, in a certain sense, the individual mark of a human being. The domicile constitutes a legal qualification of a specific relationship between a person and a place. The legal construction of domicile is composed of two elements: the stay in a given locality and the intention of permanent residence. The permanence of residence in a given territory is reflected, above all, by such a stay which aims at establishing there a centre of one's personal and business interests, i.e. a centre of actual human activity. 'Intention' in this context means not only the subjective will but such a will which can be determined upon objective and measurable circumstances. When determining whether a will exists it is not enough to rely on declarations of the interested person.

"It is therefore necessary to consider the situation of a person who, while domiciled in Poland, goes abroad. In such a case we may be confronting various sets of circumstances which must be treated differently from a legal point of view, especially when the person in question is married. It cannot be excluded that a married person who went abroad and is staying there has its domicile abroad and not in Poland. However, not in each case involving travel abroad and even long periods of residence abroad there is a change of domicile resulting in legal consequences. This applies, in particular, to travel with the purpose of study, to travel in a diplomatic mission, on official business, to travel in the search of temporary employment. However, in some cases, a married person goes abroad, above all, in order to get a divorce which, in the light of the family law in force in his country it would be difficult to achieve or which would be excluded for a certain period. Of course, under such circumstances the main aim is to evade the obstacles in obtaining a divorce under national law. Such an intention cannot, of course, have any essential importance when interpreting Article 25 of the Civil Code in the situation under consideration. Without overriding importance for the acceptance of a change of domicile from that in Poland to that abroad is also the fact that person involved has a permit of permanent residence in the country where he or she remains. Foreign authorities may act for various reasons, which cannot always be construed as conclusive evidence of a change of domicile from the point of view of the law of this country. Considered from that point of view, the question as to whether the person involved went abroad for a limited period, as witnessed by the necessary travel documents (e.g. passport), is no doubt of essential importance. The mere circumstance that immediately after having gone abroad or later, a person in such a situation decided to establish there his or her centre of personal and business interests cannot justify the conclusion that his or her place of domicile had from that moment become the place of domicile abroad.

It must be pointed out that considerations concerning the place of domicile in Poland and its change to a place of domicile abroad cannot be abstracted from the problems affecting the premisses of recognition of the foreign court judgement.

"Therefore, when considering the premisses (Article 1146, paragraph 1, p. 2 of

the Code of Civil Procedure) of recognition of a foreign judgement account must be taken also of the moment which is of importance for the determination of premisses of recognition of a foreign judgement; in particular, it is necessary to establish whether it is the moment of adjudgement by a foreign court which is of overriding importance, or the moment of adjudgement in the proceedings involving the recognition of the judgement of a foreign court. As a general rule it can be stated that the case ought not to belong to the exclusive jurisdiction of a Polish court, both as far as the date of adjudgement by a foreign court and the date of decision by a Polish court on an application for the recognition of a foreign court judgement are concerned; it goes without saying that, from the very substance of the matter, overriding importance has the "jurisdictional situation" on the date of adjudgement by a foreign court. However, it is not possible to ignore whether the lapse of time could not be without importance for the determination that at the time of the proceedings concerning the recognition of a foreign court judgement the person involved had its domicile not in Poland, but abroad. For, as far as this case is concerned, account has also to be taken of the fact, that if as a result of a long stay abroad and of the accompanying circumstances essential in the light of Article 25 of the Civil Code the person involved would have lost its place of domicile in Poland, then the facultative jurisdiction of a Polish court could have entered into account (Article 1100, paragraph 1, point 1 of the Code of Civil Procedure), thus involving a different evaluation in the light of Article 1146, paragraph 1, point 2 of the Code of Civil Procedure, and in this connection the obstacle excluding the recognition of a foreign court judgement would have been removed. Considering the whole problem from still another point of view, it has to be mentioned that the refusal to recognize a divorce decree by a foreign court for the reason that, according to Polish law, the case belonged to the exclusive jurisdiction of Polish courts (Article 1146, paragraph 1, point 2 in connection with Article 1100, paragraph 1, point 2 of the Code of Civil Procedure) would lead to the conclusion that a party willing to settle its family relationships in both states ought to pray for divorce also in a Polish court. It could not be excluded, that—considering the time factor—the divorce petition would have been filed under conditions in which the Polish court would have ceased to possess exclusive jurisdiction (Article 1100, paragraph 1, point 1 of the Code of Civil Procedure), which would mean that in the light of Article 1146, paragraph 1, point 2 of the Code of Civil Procedure, there would be no obstacle preventing the recognition for that reason.

"Because of all above mentioned considerations one must conclude that in order to admit change of domicile from one in Poland to one abroad, the mere intention to establish abroad one's centre of personal and business activities is not sufficient. It is also necessary to establish the existence, above all in the date of granting of the divorce decree by a foreign court, of objective circumstances, in the light of which it could be stated that the person involved had established abroad its centre of personal and business activities. Such an evaluation can be made only after a careful and comprehensive examination of all essential aspects of the case.

Recognition of a Foreign Judgement III

Divorce granted in the USA. — Inadmissibility of control of the substance of a judgement by a foreign court. — Deprivation of the possibility of defence before a foreign court.

Supreme Court, Civil Chamber. Decision of December 5, 1979 (I CR. 174/79) concerning the application by Stanisław Z. with the participation of Jadwiga Z. for the recognition of a foreign judgement (Decisions of the Supreme Court, Civil Series, 1980, No. 5, item 100).

Stanisław Z. applied to the Voivodship Court in Warsaw for the recognition of the effectiveness on the territory of the Polish People's Republic of the decree of the Higher Court of Fairfield District of the State of Connecticut, USA, of December 18, 1973, declaring his marriage with Jadwiga Z. born K. contracted in Warsaw, October 15, 1956 as dissolved. The Voivodship Court rejected the application, considering that Jadwiga Z. was deprived of her right to defence before the foreign court, because she received the notification on the date of the court hearings after they actually took place.

The applicant filed the appeal which was dismissed by the Supreme Court. Giving reasons for its decision the Supreme Court stated the following:

"The system of recognition of judgements by foreign courts in force (Article 1145 and following of the Code of Civil Procedure) implies limited control of the proceedings before a foreign court and of the judgement of such a court, namely it is restricted only to the control from the point of view of the premisses, mentioned in Article 1146 of the Code of Civil Procedure; thus, the above mentioned system implies the inadmissibility of control of the substance of the judgement by a foreign court.

"Consequently, the respondent cannot present the substantive explanation of the circumstances of the case and the justification of its prayer before a Polish court, which examines the admissibility of recognition of a foreign judgement; all substantive charges against the plaintiff must be presented at the proceedings before the foreign court. The respondent must therefore have a guaranteed and genuine possibility to present his case at a proper time and in a due form at the proceedings before the foreign court. This explains why, among the premisses of Article 1146 of the Code of Civil Procedure, such great prominence is given to the requirement that the respondent shall not be deprived of his right to defence. (Article 1146, paragraph 1, point 3 of the Code of Civil Procedure).

"The judgement as to whether the respondent was not deprived of his right to defence is not limited to the examination of foreign procedural law. Hence, a notification about the date of the hearings sent to the defendant in accordance with the requirements of the foreign law is in itself no proof that the respondent was not deprived of his right to defence. The evaluation of the question as to whether the respondent was or was not deprived of the possibility to present his defence is subject to the fundamental principles of the Polish legal order, namely:

to one of the major principles governing Polish procedural law guaranteeing the equality of rights of the parties. This principle provides, in particular, for the guarantee that each party is given the opportunity to present its case, and also for the obligation to inform the parties of the consequences resulting from the failure to act in accordance with procedural requirements and from the failure to attend the court hearings.

"Furthermore, the evaluation as to whether a party was deprived of its possibility of defence must take into account the concrete situation of the party concerned [...].

"Whatever the case may be, a party can be considered as having been deprived of its right to defence if, between the date of delivery of the notification and summons to attend the hearing and the date of the actual hearings, it was in no position in the normal course of events to realise its defence i.e. assuming that the form of the notification and summons is proper, to get the text translated, to consult a lawyer, to entrust somebody with the drafting (or to draft) a proper document containing the necessary arguments at a proper date so as to make sure that it arrives on time before the opening of the court hearings. All the more so, it can be considered that a party was deprived of the possibility to present its defence if the notification and summons to attend the court hearings arrived too late, namely after the date of the court hearings."

Note: The Supreme Court gave a similar ruling on the subject of deprivation of the possibility of defence before a foreign court in 2 subsequent cases concerning the recognition of divorce decrees delivered by USA courts, namely in the decisions of May 7, 1980 (IV CR 116/80) and of January 9, 1980 (IV CR 478/79). The corresponding texts are to be found in the Jurisprudence of the Supreme Court, Civil Series, 1980, item 220 and 233.

Awards of the Court of Arbitration at the Polish Chamber of Foreign Trade in Warsaw

by ANDRZEJ W. WISNIEWSKI

1. Award of 23 April 1980 in Case No. 102/79

The circumstance that the parties agreed to carry out their transaction on the basis of total compensation does not exclude the possibility of adjudgement of the equivalent in money when the amounts of mutually delivered goods differ only slightly from the amounts stipulated, provided that the delivery of excessive quantity has been accepted without reservations.

Excerpt from Reasons

The claimant "T", seated in Warsaw, claimed from the defendant firm "G" of West Berlin the payment of US \$411.41 with interest. The claim arose in connection with two contractual documents signed between the parties under which the claimant undertook to deliver to the defendant 78.00\$ value of textures as a compensation against the same value of textiles.

After the deliveries under the contract in question have been made, the claimant accounted the balance in his benefit: US \$321.46 to cover the surplus of his delivery to the defendant and US \$90.00 to cover the quantity lacking from the defendant's delivery.

The defendant omitted to present the answer to the claim. Consequently, the Court of Arbitration made the award relying upon the proofs offered by the claimant. On grounds of the claimant's assertions as well as the defendant's statement submitted by the claimant in which the first expressed his readiness to acknowledge the claim (telex of 17 January 1979), the Court found the claim justified.

The Court adjudged to the claimant the demanded amount of US \$411.46, finding justified the claim expressed in money in spite of the contractual clause providing for "a 100% compensation" settlement. In this finding the Court relied on the facts that the defendant has accepted the delivery exceeding the stipulated quantity without any reservation and that the value of the claim represented only an insignificant percentage of the whole value of the contract. Moreover, such a solution, in the opinion of the Court, does correspond with everyday practice of international commerce in similar transactions.

The interest in the amount of the claim had been adjudged by the Court from the date of the statement of the claim in arbitral proceedings only; the Court found that the claimant's demand of the interest from the earlier date is not justified in the light of specific settlement problems connected with compensation contracts.

2. Award of 8 July 1980 in Case No. 151/77

The order (connected with the clearing system) of the settlement of foreign firms' claims and providing for a short period of prescription for such claims, introduced by the government of one party and not having the force of law, is not binding upon the other party unless expressly introduced into the contract. The fact that the parties provided in a separate protocol for a shorter time for presentation of claims to be covered by the letter of credit does not indicate that the parties' intention was to set aside the order of settling mutual claims as established by the general terms of their contract.

Excerpt from Reasons

The Polish foreign trade enterprise "T" of Warsaw claimed from the Egyptian firm "U" of Cairo the payment of US \$6,940.59 with interest and costs of proceedings. The enterprise "T" submitted that the firm "U" had delivered to him in five parts an amount of souvenirs under the contract of 1 March, 1975. A substantive part of the goods proved to be defective, which had been notified to the firm "U" by five separate debit notes dated from March 1976 to February 1977.

The firm "U" maintained that the debit notes were mailed after the expiry of the contractual prescription time-limit. In reply to the claim of "T", the defendant explained that:

— At the signature of the contract in question he had drawn the attention of the claimant to the provisions enforced by the Egyptian Ministry of Economy, which provisions were also sent to "T" so that he could abide them;

— The provisions in question changed the order of payments and narrowed the prescription limit for claims resulting from undue quality and quantity of deliveries to three months, of which changes the Bureau of Commercial Counsellor of the PPR in Cairo had been informed in due time;

— At the signature of the contract the defendant indicated that the general conditions of purchase (Chapter III, p. 1) were contrary to the above-mentioned regulations and by this reason the parties worked out special terms enclosed to the contract;

— Firm "U" trusted that "special terms" negotiated and signed by both parties set aside not crossed out printed provisions (there were also other stipulations of the said general conditions that were not crossed out but did not apply to the contract in question);

— The formulation of "special terms" did show that they applied not only to claims covered by the letter of credit but, on the contrary, they introduced a three-months prescription of claims concerning quality and quantity of goods independently from the way and order of payment;

— The Egyptian industry and currency control authorities obviously would not have approved the contract without such effect of the said "special terms";

— In the next contract between the parties dated 27 November 1975, the general conditions were already put in conformity with the Egyptian provisions.

Consequently, the defendant suggested that the claim should be denied in whole.

In its statement of 13 March, 1979, the enterprise "T" maintained, regarding the above opinion of the defendant, that:

— "Special terms" (enclosure No. 1 to the contract in question) established only the possibility of satisfying minor claims from the 5% amount deducted from the total value of the letter of credit and by no means they limited the defendant's liability for any claims demanded within the limit of time prescribed in the general terms of contract;

— The conditions of the next contract between the parties in no case should serve as a basis for analogy or interpretation of the contract in question;

— The Egyptian regulations invoked by the defendant were binding upon his foreign partner;

— In reply to the claim the defendant acknowledged his liability excusing himself by difficulties in obtaining a transfer permit;

— The claimant suffered heavy losses being made to satisfy justified claims of his inland customer "C".

In his statement of 17 August, 1978, the defendant "U" relied upon previously explained objections, in addition submitting that the claims of "T" were not proved as to their amount. Consequently, the enterprise "T" presented to the Court the copies of notes of credit to the total amount of 187,854.00 zł for the benefit of the customer "C", and a copy of transfer order for the bank, dated 26 January 1977 and relating to the above amount.

Relating to the proofs presented by the claimant the firm "U" stated on 14 December 1978 that (i.a.):

— The proofs of the payments to the benefit of "C" did not indicate their relation to the deliveries under contract in question and to the subsequent claims of "T";

— A possibility should be admitted that the payments made by "T" to his customer were related to damages inflicted after the reception of goods in the port of destination, during the further transport.

The Court of Arbitration came to the following conclusion:

1. The claims of "T" were justified as well in principle as in their amount (deducting the amount of \$259.00 paid by the defendant during the proceedings, and minor corrections of the claimant were debit notes — to the amount of \$0.16).

2. The general conditions of purchase being an integral part of the contract of 1 March, 1975, contained the following regulation of the time and order of notifying the seller of the buyer's claims:

"The quantitative claims can be lodged by the Buyer with the Seller within six months, at the latest, after the receipt of goods at the place of destination, and the qualitative claims can be lodged by the Buyer with the Seller within 12 months, at the latest, after the receipt of goods at the place of destination."

3. The Court of Arbitration did not accept the opinion of the defendant that "special terms" of the contract cancel the above provisions of general conditions of purchase. "Special terms" provided only that:

— The letter of credit will be open to the amount of 100% of the value of the deliveries;

— After the loading of the goods the Egyptian bank would pay to the seller 95% of the value of goods loaded;

— The resting 5% was retained to satisfy the claims of the buyer as to the quantity and quality of goods;

— If within three months from the date of delivery the bank would not receive notifications of the buyer's claims, the resting amount was to be paid to the seller without further consent of the buyer or his bank.

The stipulation of "special terms" indicates only that the buyer could satisfy his claims, if notified within the period of three months, from the amount of 5% retained by the Egyptian bank under conditions of the letter of credit. Contrary to the defendant's assertions, this does not bring about any general shortening of the time-limit of notifying claims under contract or limiting such claims to 5% of the value of the goods delivered.

In the opinion of the Court, "special conditions" in their formulation and legal meaning could not set aside the general conditions of purchase making a part of the contract in question.

4. The circumstance that the following contract of the parties provided for a shortened time-limit for claims cannot influence upon the legal meaning of the conditions of the contract in question.

5. All the claims of the enterprise "T" were notified to the seller "U" within six months from the date of delivery;

6. The amount of the claims was established by the claimant in strict conformity with the contract provisions relating to qualitative differences, abasement of prices in the case of undue quality, and penalties (see Chapter IV of the general conditions of purchase).

7. The point 5 of "special terms" provided for as follows:

"Reception of goods to be made at destination. Survey reports, if any, of "C" regarding the quality and quantity of goods are binding for both parties."

The protocols of the customer "C" showing defects of quantity and quality, as well as the copies of credit notes by "T" for the benefit of "C", exactly correspond with the account made by "T" in his statements of claims addressed to the seller "U".

8. From the above reasons the Court of Arbitration adjudicated to the claimant the amount of US \$6,681.43 with interest of 8% p.a. from the dates of respective debit notes plus one month to cover the presumed time of mail's course.

The interest is subject to Polish law under the stipulation of the general provisions of contract.

9. The costs of arbitration fee fell upon the defendant "U" as the losing party.

3. Award of 17 July 1980 in Case No. 224/79

The acknowledgement of the claim made under condition is void and does not result in cancelling the previous period of time from the limitation period if the condition has not been fulfilled.

Excerpt from Reasons

In his claim the Hungarian foreign trade enterprise "K" of Budapest demanded the defendant Polish foreign trade enterprise "T" of Warsaw to pay rbl. 4,745.00 with 4⁰/₀ p.a. interest and costs of proceedings. The amount in question had been pretendedly due as the price of furniture delivered to the defendant during May 1977.

The claimant submitted to the Court of Arbitration the letter of the defendant dated 12 November 1977, in which the defendant stated to "agree to pay against, invoice, in spite of the bill of railway consignment lacking, however only under condition that our (i.e. defendant's) claims would be settled". The claimant referred to this letter as constituting in his opinion the acknowledgement of the claim cancelling the previous period from the limitation period, which could make a recourse to arbitration still possible on 11 November, 1970.

The defendant argued that the claim was subject to limitation. The claimant maintained his previous opinion, adding that the claims of the defendant mentioned in the letter quoted above were not proved and could not be accepted as justified by the claimant. In the statement of 1 July 1979 the claimant referred also to the previous legal findings of the Court of Arbitration made in the award in Case No. 17/78, which case the claimant deemed to be analogical.

The sole arbitrator (deciding on grounds of the parties' agreement) found a primary question to be: if the letter of the defendant dated 12 November 1977 constituted an acknowledgement of the claim. In the arbitrator's opinion, the letter in question bore the character of a proposal in the course of negotiations, containing only an expression of the defendant's consent to pay, when and if the claimant would settle mutual claims of the defendant. Such a statement may be looked upon only as, at the most, an acknowledgement under condition. The condition i.e. the settlement of the defendant's claims being not fulfilled, the acknowledgement was void of legal force. In this circumstances the letter in question could not have an effect cancelling the previous period of limitation.

Contrary to the claimant's assertions, the case in question shows no analogy with Case No. 17/78, in which the acknowledgement was decisive and not conditional and, moreover, the settlement of mutual claims took place in the way of deduction from the acknowledged amount.

Under the said reasons, the claim had to be denied.

BOOK REVIEWS * CONTEMPS RENDUS

POLISH YEARBOOK
OF INTERNATIONAL LAW
VOL. XI, 1981—1982
PL ISSN 0554-498X

Remigiusz BIERZANEK, Jerzy JAKUBOWSKI, Janusz SYMONIDES, *Prawo międzynarodowe i stosunki międzynarodowe [International Law and International Relations]*, Państwowe Wydawnictwo Naukowe, Warszawa 1980, pp. 560.

Public international law and private international law were traditionally taught at the Polish universities as two separate disciplines. In the new programme introduced a few years ago, they were merged into one teaching-matter, with international relations added as a third element. The manual under review is the first endeavour to reflect the new programme. This promise, however, has been fulfilled only in part. The book is clearly divided into two parts: Public international law (pp. 7—417), and Private international law (pp. 419—551). The first was written by Prof. BierzaneK and Prof. Symonides, the second by Prof. Jakubowski. The international relations have been outlined merely in Chapter I as a general background for the study of public international law which probably should have been done anyway even if international relations were not mentioned in the title of the book.

The division of the *first part*, devoted to public international law, follows a traditional pattern. It consists of ten chapters: I. Fundamental Problems of International Relations and of International Law (pp. 7—43); II. Outline of the History of International Law and Its Science (pp. 44—87); III. Sources of International Law (pp. 88—128); IV. Subjects of International Law (pp. 129—165); V. Organs of States

in International Relations (pp. 166—201); VI. Territory in International Law (pp. 202—260); VII. Population in the Light of International Law (pp. 261—285); VIII. International Organizations (pp. 286—314); IX. Peaceful Settlement of International Disputes (pp. 315—357); X. Law of Armed Conflicts (pp. 358—413). Chapter I was jointly written by both authors of Part I. Prof. BierzaneK wrote also chapters II, III, VIII, IX and X, while Prof. Symonides is the author of chapters IV, V, VI and VII. The selected bibliography appended to Part I lists 140 items, mostly Polish.

The book being chiefly meant as a manual for students, the authors dispensed with footnotes. In view of this, it would be advisable to make more references to source materials within the text itself. It is also a pity that no alphabetical index was added which would help the student promptly to find the passage needed.

On the whole, the chapters are well-proportioned and reflect adequately the importance of problems treated. There are instances, however, in which the personal interests of the authors tempted them to devote perhaps too much space to some choice problems at the expense of others of no lesser importance. The brevity of the chapter dealing with international organizations (29 pages, half of the

space — fifty nine pages — devoted to territory) is especially to be regretted.

In view of the primarily didactic destination of the book, the authors refrain from expressing any extreme or purely individual views on nearly any subject. Noting, whenever the necessity arises, differences of opinions, they try to follow the medium course illustrating it both by quotations from international treaties and by examples from practice, either diplomatic or judicial. It is to be stressed that they often employ the historical approach explaining the present state of law on a given point against the background of its development. This method may justify the mention, in the title of the book, not merely of international law but also of international relations.

Main characteristics of international relations are ably analysed in Chapter I. The authors rightly point out the double meaning of the term which can be construed either in a broader, or a narrower sense. The historic acceleration, especially to be observed in our century, did not escape the authors' attention either. They note an essential difference between international relations among states professing a common political and social creed and those who considerably differ in this respect. True to the line followed by the whole international law science of socialist states, they strongly emphasize the principle of the peaceful coexistence as a common basis on which relations between states belonging to essentially divergent systems have any chance of development. For the benefit of their *inter se* relations, the socialist community of states had to build up a set of new principles consistent with their social philosophy without, however, disregarding the common ground of general international law. The much debated problem of the mutual interplay between domestic and international law is dealt

with, in the same Chapter, rather dialectically as both essential doctrines: the monistic and the dualistic have been objectively presented but none is being unequivocally adopted.

Prof. Bierzanek did an amazingly good job in Chapter II skilfully resuming the historical development of international law and its science in hardly more than forty pages. Proportions in which he deals with different periods are open, however, to discussion. For such a brief survey, Antiquity could have been treated less extensively.

Although Prof. Bierzanek divides history in terms of "feudalism", "passage from feudalism to capitalism", etc. rather than in any other way, not every reader will concur with his periodization according to which e.g. Alberico Gentili would still to be considered a medieval author while Grotius would appear to be the first modern writer. Bierzanek's great merit in telling the story of the development of the science of international law certainly consists in not restricting himself to the well-known classics of international law but also in teaching the reader about the less known Polish writers, some of them drawn from oblivion only by the post-war Polish science.

In Chapter III, the clear distinction is first made between the material and formal sources of international law. Placing the former in the extra-legal sphere, the author confines his further analysis to the latter group only. While denving to Article 38 of the Statute of the International Court of Justice the character of a list of sources of international law, Prof. Bierzanek recognizes two unquestioned sources only, namely treaty and custom. The law of treaties is presented chiefly in terms of the Vienna Convention of 1969, in which perhaps indeed — as often stressed i.a. by the International Court of

Justice — the already existing rules of customary law have been reflected. For practical reasons probably, the author devotes far more space to the circumstances of the conclusion of treaties than to those of their invalidity and termination. Omission of some of fundamental rules governing that latter field, such as Article 42 of the Vienna Convention, is however to be regretted. Among elements whose character as sources of international law is — according to Prof. Bierzanek — somewhat doubtful, the case of the resolutions of organs of international organizations had better been treated in more detail. In only partly share the author's views on the character of the "general principles of law [...]" as mentioned in subpara. (c) of Article 38, para. 1, of the Court's Statute, but of course the case is unclear enough for each of us abiding by his opinion in this respect.

In Chapter IV, Prof. Symonides rightly abandons the idea — until recently defended by some of the Polish and Soviet scholars — that states alone can be subjects of international law. He convincingly points out the main error: assumption that all subjects of a given legal system must necessarily be of the same kind and have identical rights and obligations. Like most — socialist writers, Prof. Symonides endows with the international law subjectivity nations (peoples) fighting for independence. International organizations, he cautiously says, can — but need not — be subjects of international law if such is the intention of the member states and, of course, only within the limits of such intention. The author analyses, in a particularly interesting way, the dual subjectivity of the Holy See and/or the Vatican City. It is open to discussion if, in the present state of international law, individuals, under certain conditions and in certain respects, could have no more

claim to international law subjectivity than admitted by the author. The paragraphs on state recognition — also on recognition of governments, nations, insurgents and belligerents — even if somewhat lengthy, belong to the best-written parts of the manual. This is also my judgement as to the paragraphs on state responsibility, although they should perhaps rather be inserted in another place, immediately to precede the chapter on the settlement of disputes. But this, of course, is a matter of opinion or even taste.

The merit of Chapter V consists in its wide approach to the presentation of state organs. The author deals in more detail than most other manuals of international law with central organs. Also, when passing to those functioning abroad, he very rightly does not restrict himself to diplomatic and consular organs in the classical meaning of the terms but pays full credit to such other organs now extant as special missions, trade missions, delegations of states to international conferences and organizations, and military missions. He particularly stresses everything that pertains to the organization and legal status of all these missions and their personnel, rather at the expense of their functions about which more could have been said. The author lets it be presumed, rather cautiously, that he would not be against adoption by socialist states of the institution of honorary consuls.

Prof. Symonides is a recognized authority on problems concerning territory. The thoroughness of his presentation of them makes Chapter VI the longest in the whole book. To my terminological taste, the field covered by the very term *territory* is somewhat too broad. But of course Prof. Symonides is not the only author who employs the term *territory* in the overbroad meaning in which another term, such as *space*, would be semantically

better suited. The author deals in turn with the land territory and its acquisition, putting a particular stress on the intricate problems of state frontiers (the skilful way in which he treats Polish frontier problems is particularly noteworthy). He passes then to international rivers, to the law of the sea, finally to air and space law. No wonder that, in his quality of the Polish delegate to nearly all the sessions of the Third UN Conference on the Law of the Sea, he tells in great detail the fascinating story of negotiations at that Conference from which a new codification of this important branch of international law had finally to emerge. For didactic purposes, a clear-cut division of the subject-matter of Chapter VI into such space elements which can be subject to state sovereignty and those which cannot would be advisable.

The extensive presentation of all the problems listed under the heading *territory* may appear to have been done at the expense of the, far shorter, Chapter VII on Population. The author deals here first with nationality problems, then with the treatment of foreigners, political asylum and extradition, to conclude with the international protection of human rights. In the future editions of the book, a paragraph on the protection of minorities and on manifold activities of the International Labour Organization had better been added.

As already pointed out, the brevity of Chapter VIII dealing with international organizations is particularly to be regretted. The United Nations are the only organization analysed in detail. The reader would expect to learn somewhat more about specialized agencies, also about regional organizations which play too great a role in the present day international law to be dispensed with in hardly more than four pages. In comparison with them, non-govern-

mental organizations, mostly neglected in international law manuals, fare somewhat better.

When reading Chapter IX, one can easily guess that Prof. Bierzanek is also the author of a special monograph on international disputes. The chapter deals extensively with all the means of settlement putting a particular emphasis on direct negotiations without, however, neglecting various possibilities of the participation in such negotiations of a third party. After having presented the organization and functioning of international courts, especially of the International Court of Justice, the author adds a most interesting paragraph on trends of development of international adjudication in which he discusses the reasons for which it has not achieved as yet such results as were expected by the drafters of the consecutive statutes of the "World Court". In spite of the many obstacles to the Court's full success, the author's conclusions are not pessimistic. The Chapter ends with a paragraph on means of pressure "short of war" in which the problem of retorsions and reprisals has been thoroughly analysed.

Chapter X, nearly as long as that on territory, deals first with the problem of the very admissibility of wars putting of course a particular stress on everything that pertains to the recourse to force in terms of the UN Charter. After the case for the outlawry of war has been fully presented, there follows an excellent study of the *jus in bello*. However, as I have been dabbling myself in matters pertaining to this very field, I would venture here a few critical remarks. It is to be regretted that, after having devoted so much space to the study of the means of protecting victims of war, the author contented himself with a short mention only of the Convention on protection of cultural property which, to my mind,

is no less important. When speaking about the inadmissibility of nuclear weapons, more emphasis should have been put on Article 25 of the 1907 Hague Regulations, especially on the mention there of "whatever means". When speaking about "armed forces" in terms of the Geneva Protocol I of 1977, not only Article 43 but also Article 44 should be mentioned in which the rigid conditions imposed upon combatants by Article 1 of the 1907 Hague Regulations and Article 4 of the 1949 Convention on Prisoners of War have been so significantly loosened. That the same state could act as protecting power for both belligerent parties seems too rare a possibility to deserve any mention in a manual. There are, on the other hand, passages so remarkably written — the one on military necessity is particularly noteworthy — that they fully compensate the reader for the few shortcomings mentioned.

It is extremely difficult to sum up all the qualities of a book of such richness. The analysis of its contents has already been preceded by a few general remarks. Let it be said in conclusion that this is indeed an outstanding manual. It would not fear comparison with nearly any manual published abroad, whether in the East or in the West.

by Stanisław E. Nahlik

*
* *

The last part of the book is devoted to the systematic presentation of the principles and doctrines of the private international law.

Its Authors, Jerzy Jakubowski, prematurely deceased professor of Warsaw University, eminent scholar and educator, provides the reader with a vivid and lucid analysis of the

rules of Polish private international law as seen from the perspective of the universal development of this branch of legal science.

The main trends in the evolution of the private international law are discussed in the introductory chapters which cover topics including the nature of the private international law, the place of this body of law among other branches of law and legal disciplines, and the historical development of its rules. In the course of this discussion Prof. Jakubowski subscribes to the view that private international law concerns itself not only with the question which legal system should be applied to the determination of the issue containing some foreign element (conflict of laws) but also with the direct regulation of the international relations involving natural and legal persons.

This approach manifests itself in the Author's presentation of the methods, forms and sources of international private law (Chapter XII), in which the analysis of conflict of law rules is combined with that of directly applied rules. The both types of rules are to be looked for not only in the national legal system but can also be formulated through international legislative process. The Author stresses also the importance of the process of unification of customs and usages to the regulation of international trade.

The analysis of the general principles of the international private law begins with the discussion of the principles of the treatment of foreigners. Again the Author does not limit his presentation to the rules of the Polish law but explains also the principles contained in the UN Charter, Universal Declaration of Human Rights of 1949 and the Covenants on Human Rights of 1966 that might affect the legal situation of foreigners.

Among the questions discussed in

the chapter devoted to the general principles of private international law particular attention should be given to the application and interpretation of the rules contained in the acts of international legislation. This topic has already been profoundly examined by Prof. Jakubowski in one of his major monographs. Here he draws from its conclusions. Among the devices contributing to the greater uniformity in application and construction of this type of rules the Author lists the appropriate training of judges, the inclusion in the acts of international legislation special directives regarding their interpretation, the wide dissemination of the decisions of the national courts based upon rules contained in those acts, the institutionalisation of the process of the unification of law, the

special rules of the interpretation of the acts of international legislation.

The examination of the general principles of the international private law is followed by the concise analysis of the pertinent Polish rules in the area of the law of persons, property, obligations, family and domestic relations as well as succession. The private international law in its broadest sense has been for years a subject of Prof. Jakubowski's deep interest and scholarly writing. It was for the first time, however, that he offered his students and friends a synthesis of his understanding of this fascinating discipline, synthesis which is extremely instructive and in the same time intellectually stimulating.

by Andrzej Burzyński

Andrzej CAŁUS, *Prawo cywilne i handlowe państw obcych* [Droit civil et commercial des Etats étrangers], Warszawa 1979, PWE, 412 pages.

1. Le développement dynamique des rapports commerciaux internationaux suscite un intérêt de plus en plus grand pour les systèmes juridiques étrangers qui régissent ce domaine de la vie économique. La recherche faite dans ce domaine a une importance essentielle aussi bien pour la théorie de droit civil et commercial que pour la pratique. Le présent ouvrage du professeur A. Całus va à la rencontre de ces besoins. Il a un caractère d'un manuel présentant d'une façon concise les institutions du droit civil et commercial qui jouent un rôle considérable dans les relations économiques. Selon l'intention de l'auteur, son manuel a pour but de «créer la possibilité de prendre connaissance générale du caractère spécifique des systèmes juridiques des Etats capitalistes qui réglementent l'activité économique professionnelle» (p. 11). Il est spécialement

destiné aux étudiants des facultés de commerce extérieur des écoles économiques supérieures.

2. Le manuel du professeur Całus est une étude de droit comparé. L'auteur a pris en considération avant tout les systèmes de droit anglais, français et ouest-allemand renfermant aussi dans le champ de son intérêt le droit italien, suisse et des Etats-Unis. C'est un juste choix, car il embrasse les systèmes juridiques les plus représentatifs pour les pays capitalistes contemporains développés.

Le manuel englobe les institutions et les contrats fondamentaux du commerce. Sa composition respecte le principe de la présentation conjointe des systèmes d'origine romano-germanique et des systèmes anglo-américains. Les difficultés d'une telle approche du matériel normatif (quant à son contenu et à sa forme) sont bien connues. Il

convient de constater avec estime que l'auteur a réussi à les surmonter d'une manière remarquable.

Le plan de l'ouvrage est correct. Après les remarques introductives où on a présenté, entre autres, les sources de droit, l'auteur analyse les problèmes des sociétés, du commerçant et d'autres institutions fondamentales du commerce ainsi que les différentes formes de la représentation commerciale et de l'intermédiaire. La partie suivante est consacrée à la problématique des contrats de commerciaux (formation, validité, exécution, types de contrats, conséquences de l'inexécution ou de l'exécution imparfaite des obligations qui en résultent). L'auteur s'est trouvé devant la tâche extrêmement difficile de présenter un énorme matériel dans la forme très concise. La conception du manuel basée sur cette idée risque toujours de déformer l'image de la discipline scientifique à laquelle il est consacré. Le danger est encore plus grand quand il s'agit de présenter plusieurs systèmes juridiques étrangers. Grâce aux connaissances

étendues de l'auteur et à son talent de les présenter brièvement, il a réussi à éviter en général ce danger. C'est seulement dans les cas peu nombreux que l'étendue du matériel a conduit à s'écarter du principe selon lequel rien d'important ne devrait être oublié et le livre ne dépasse pas le volume convenu avec la maison d'édition.

3. Dans ces brèves remarques il est impossible de rendre suffisamment compte de la riche substance du premier, dans la doctrine polonaise, manuel qui présente en entier les domaines choisis du droit civil et le droit commercial d'un grand nombre de pays capitalistes les plus développés. La valeur scientifique de l'ouvrage du professeur Calus constitue incontestablement un apport important à la science polonaise du droit civil et économique ainsi qu'au droit comparé. Par sa valeur pratique, il dépasse donc largement le cercle des destinataires auxquels l'auteur l'a adressé.

Jerzy Rajski

Genowefa GRABOWSKA, *Prawo dyplomatyczne w stosunkach państw z organizacjami międzynarodowymi* [Diplomatic Law in the Relations of States with International Organizations], Uniwersytet Śląski, Katowice 1980, pp. 198.

With the emergence of international organizations and the broadening of their activities which cover ever wider fields of international relations, science of international law and practice of international relations began to face new and complex problems. These include the problem of so-called diplomatic law of international organizations, which — broadly speaking, — cover the privileges and immunities of representatives and observers of states in their relations with the organizations as well as the privileges and immunities of the organizations and

their functionaries. The problem is of importance and rather intricate. So far, no comprehensive study was made on the subject. The monograph by Dr G. Grabowska fills therefore a gap in our literature and, to some extent, in foreign literature as well.

Dr G. Grabowska does not deal with all problems of diplomatic law of international organizations. As indicated in the title the study is restricted to that part of diplomatic law of international organizations which had, so far, attracted the least attention, but had been over the past few

years the subject of lengthy debate at the International Law Commission of the UN. It concerns that part of diplomatic law of international organizations which deals with the legal situation of the representatives and observers of states in their dealings with international organizations.

There is nothing to say about the choice of the subject which is quite convincing both from the point of view of the theory of international law and practice of international relations. No objection can be raised against the scope of the study. G. Grabowska covered all universal and regional international organizations of some importance. She succeeded in establishing a detailed catalogue of all norms regulating the legal status, the privileges and immunities of permanent missions and permanent representatives set up at the organizations, as well as of delegations and delegates on sent to the organs of the organizations and to international conferences. The scope of the study was extended to cover also missions and delegations of non member-states of the organization, i.e. of observers of states at international organizations. The outline of the study thus follows a well defined pattern.

The first two chapters deal with some preliminary problems. The first introduces the reader to some general concepts of diplomatic law of international organizations and characterizes its basic sources; the second discusses the competence of states and international organizations as subjects of international law to enter into mutual relationships under international public law. The consideration of these problems is kept, however, within the strict limits set by the general outline of the study.

Chapters III, IV and V deal with closely interrelated problems, namely with the legal foundations of the estab-

lishment of permanent missions and of the sending of state delegations to international organizations (Chapters III and IV) and with the structure of these missions and delegations (Chapter V). The last two chapters are also closely interrelated. In Chapter VI the author analyses the rights and duties, and in Chapter VII the privileges and immunities of the state representatives in international organizations.

Dr G. Grabowska did the right thing by starting with the presentation of the more general problems, continuing with the analysis of the permanent missions at the international organizations and of the delegations to the organs of the organizations and concluding with the discussion of the rights, duties, privileges and immunities of the representatives of states at international organizations. We were thus offered a well conceived and complete picture of the problem.

One may, however, object against certain flaws in that coherent composition, arising from the inclusion into the study of the problem of international conferences. It is not clear as to whether the author deals with all international conferences or only — following the terms of the Convention of 1975 — with conferences organized by international organizations. In this connection a problem of some importance arises, as to who is the subject of such a conference. Also, it seems to me that the title of Chapter IV ought to be worded differently. For in its present form (*Delegations of States in International Organizations*) there is no place in it for subchapter 3 entitled "*Delegations of States to International Conferences*". On the other hand, it must be recognized that it was not easy to include the problems of international conferences into such a pattern, for a conference is neither an organ of an organization nor an organization.

The reviewed book reflects a very solid scholarly background. The author studies thoroughly all legal problems involved in the light of existing literature, extensive source material and practice. She made extensive use of the documents of the International Law Commission of the UN on the codification of the diplomatic law of international organizations. The main object of scrutiny are, of course, the provisions of the Convention of 1975 on the representation of states in their relations with universal international organizations. She made a highly interesting comparative study of the Convention and the earlier legal rules, regulations applied in practice and prevailing doctrine. She was also aware of the necessity to compare the scope and contents of the new conventional regulations with the traditional diplomatic law as developed over the centuries in the bilateral relations of states.

The main guiding idea and fundamental legal trend are reflected clearly in all chapters. They follow logically and are inter-related. The analysis and synthesis are carried out in accordance with the best traditions of strict legal thinking. The main considerations are well documented and backed by references to the theory of the sources of law and other relevant institutions of international law. Dr G. Grabowska offers her reader a clear, concise and logical picture of an important legal problem in a broader theoretical setting and illustrated by examples of actual practice. The link established between the subject under study and the general theory of international law, the demonstration of the inter-relationships of the various phenomena constitutes the principal creative element of the reviewed book.

Some doubts have arisen in my mind in the course of the reading,

but they concern rather questions of secondary importance. I am not convinced by the terms "external subjectivity" and "internal subjectivity" of international organizations used by the author (p. 44). It seems to me that what is meant actually is the subjectivity of international organizations under the internal law of particular states, especially of host-states, and the subjectivity under international public law.

I think that the author failed to appreciate the legal value of the memorandum of 1962 which fixed the principles concerning observers of states sent to the UN. Dr G. Grabowska maintains that the memorandum was "an internal document of the organization therefore could not be considered as binding under international law" (p. 83). Such a memorandum is binding as far as relations between the organization and the states enjoying observer status are concerned. And there can be no doubt that these are mutual rights and obligations falling within the scope of contemporary *corpus iuris gentium*. Nor is there anything new in the fact that international organizations can adopt unilaterally legal act which are binding under international public law.

It is to be regretted that she did not pay enough attention and failed to discuss at greater length the role and practice of the so-called credentials committees. The long practice of the Credentials Committee of the General Assembly of the United Nations could have thrown much interesting light on the subject, to mention only the well known case of non-recognition of the delegation of the People's Republic of China.

My second critical remark concerns the general attitude of the author towards the problem of privileges and immunities of representatives of states and observers to international organi-

zations. She tends to consider their scope and contents always and exclusively from the point of view of the interests of the organization and the states establishing mission or sending observers. She ignores entirely the interests of the host state, which cannot be neglected. This is all the more important that, unlike traditional diplomacy, there is no reciprocity in this case. Furthermore, she tends to imply that generally it was the host state

which failed to live up to its obligations towards the organization and towards the missions established by member-states. Facts belie such an assertion.

These few critical remarks cannot detract from the great value of the reviewed book which constitutes a great contribution to the science and practice of international law.

by Jan Kolasa

Jerzy JAKUBOWSKI, *Międzynarodowe organizacje gospodarcze krajów RWPG. Zagadnienia prawne* [International Economic Organizations of the CMEA Member-States, Legal Problems], Warszawa 1980, PWN, pp. 295.

The broadening process of socialist economic integration within the framework of the Council for Mutual Economic Assistance (CMEA) is finding its reflection, in particular in the course of the past few years, in the emergence of new institutions, such as international economic entities, whose members are not states but enterprises of the CMEA member-states. Whereas the intergovernmental economic organizations of the CMEA member-states, functioning already for many years, have been extensively analysed by legal scholars, this new institution has, so far, not been the subject of a broader and comprehensive legal scrutiny. The monograph of Prof. Jerzy Jakubowski fills therefore an important gap.

In the chapters of his book the author reviews in a comprehensive way the legal problems of the economic organizations of the CMEA member-states, discussing in turn such questions as: the concept and function of these organizations; the legal foundation of their establishment; the creation and dissolution of these organizations; their internal organizational structure; the legal aspects of their activities; the settlement of disputes

arising out of the establishment and activities of these organizations. The analysis is then followed by a series of concluding remarks.

One of the great merits of the author is the inclusion in his analysis of practically all important legal aspects concerning the international economic entities of the CMEA member-states. These legal aspects are discussed in a clear and interesting manner, offering to the reader a broad and comprehensive view. Apart from the presentation of a series of very special problems (the author is focusing his attention on some fundamental questions such as the legal personality of the organizations, their nationality, their personal status etc. He confronts his own views with those of other scholars from the other socialist states, in particular as regards some of the more general problems.

In a review such as this one, it is impossible to discuss in detail all the legal problems taken up by the author. We shall therefore restrict ourselves to a reference to some of them.

Prof. Jerzy Jakubowski offers, a clear-sighted analysis of the fundamental differences between the intergovernmental economic organizations

of the CMEA member-states and the other organizations discussed in his monograph. He sees the distinction, first and foremost, in their membership (in the case of the former — states, in the latter — national economic entities), as well as in their functions (in the former — mainly functions of coordination, in the latter — mostly direct economic activity).

The author describes the history of the development of the institutional forms of economic cooperation of the CMEA member-states, at first in the shape of exclusively multilateral intergovernmental organizations, and later also in the shape of international economic entities. He discusses also the evolution of the socialist doctrine (legal and economic) in this field (see pp. 9—89).

Having made this distinction between the intergovernmental economic organizations and the other international economic entities the author analyses also the differences occurring between the various categories of the latter, taking into consideration, above all, their functions and their scope. At the same time he points out that, so far, there is practically a common legal basis for the establishment of both intergovernmental and other international economic organizations, namely the international intergovernmental agreement.

The legal problems of the various aspects of the international economic organizations are dealt with by the author principally in the light of the Uniform Rules concerning the establishment and functioning of international economic organizations of the CMEA member-states adopted by the CMEA in 1976. These rules have no normative character, since they offer only a pattern reflecting the intention of the parties concerned to arrive at a common practice as regards the establishment and functioning of

the organizations to which they belong. The need to adopt such common standards by way of an international act have been emphasized by many scholars, who pointed out that there were no appropriate rules to this effect in the internal legislations of the various CMEA member-states. The author represents the view that because of the relatively short period of activity of the international economic organizations of the CMEA member-states it is preferable to refrain from adopting multilateral normative rules. He favours the conclusion of a multilateral convention but only on the basis of greater experience, with the proviso that such a convention will limit itself to the settlement of the problem of the personal status of the international economic organizations, leaving the principles of their activity to be regulated by way of intergovernmental agreements *ad personam*, for each organization separately. (pp. 113—116).

Discussing the legal status of the international economic organizations the author stresses their "civilistic" character; interpreting paragraph 9 of the Uniform Rules he concludes that international economic unions and joint enterprises are considered to be legal persons of the country of residence, but at the same time they owe their legal personality to the international agreement which led to their establishment. Therefore, in the future, the acceptance of the thesis on the international character of their personal status will be fully justified (p. 170).

The above mentioned Uniform Rules provide no answer to all questions concerning the legal aspects of the international economic organizations of the CMEA member-states. Such is the case with respect to the nationality of such organizations. The author devotes his attention to this problem also, pointing out that the

determining factor is the fact that they are being created by way of an intergovernmental agreement. At the same time, he considers that whenever such an organization is being established by way of an agreement concluded by economic entities of the CMEA member-states, i.e. by way of a civil law agreement, one should accept the principle of the nationality of the country of residence (pp. 149—150).

An interesting, but quite controversial problem is that of the legal character of the property rights of the international economic organizations. Quoting extensively the opinions represented by other scholars he concludes that the property rights of the international economic unions and joint enterprises are of such a nature and scope, that this suffices to recognize these unions and enter-

prises as the rightful owners of their assets (p. 199).

Discussing various legal aspects of the activity of these organizations the author states that the legal order presiding over their action is quite peculiar, though not entirely different from the legal system which regulates the activity of the national economic organization of the country of residence where the international organizations have their headquarters. (p. 266).

To sum up, it can be stated that Prof. Jerzy Jakubowski has given us a valuable and interesting monograph dealing with a new, but at the same time developing institutional legal form of cooperation of the CMEA member-states.

by Henryk de Fiumel

Jan KOLASA, *GATT — z zagadnień tworzenia i stosowania prawa handlu międzynarodowego* [GATT — *Problems of Creation and Application of the Law of International Trade*], Wrocław 1979, Ossolineum, p. 190.

The law of international trade is one of the major fields of interest of both practice and science. The creation and application of legal rules in this field, especially of rules of an international nature, as well as the study of these phenomena is, at present, an important but at the same time a very difficult undertaking. With the introduction into international economic relations of the obligations and machinery set up by the General Agreement of Tariffs and Trade international trading relations have been subjected to a new set of extensive legal rules, all the more so since, as pointed out by Professor J. Kolasa, GATT "intervenes bilateral and multilateral rules, thus creating a legal system characteristic of this organization and to some extent also of the law dealing with international economic relations" (p. 171).

The book by Prof. J. Kolasa is divided into two parts. The first deals with the creation of law in the form of tariff concessions; the second discusses the application of the law in the light of consultation and conciliation. The internal structure of both parts, the way in which the particular groups of problems are presented seems to indicate that the author adopted a series of fundamental premisses, namely that:

a) GATT represents an international organization which has to be treated along the pattern of the UN Specialized Agencies;

b) Custom tariffs represent the most important part of the material obligations arising out of GATT membership, so that by studying the process of negotiation of tariff concessions and of their assimilation to the GATT

system it is possible to follow the process of the creation of the law within the framework of GATT and the legal nature of the rules applying in such a way to the law of international trade;

c) The law of GATT "is not only a series of material provisions, but also — and in the first place — an extensive and diversified system of procedure" (p. 176);

d) For the application of the law of GATT of particular importance is the general system of consultation and conciliation provided for in the General Agreement; the system has been so devised and developed later in practice that as a result GATT is being considered as representing one of the most effective international organizations;

e) The essence of the legal rules embodied in GATT strikes a balance between the economic interests and benefits of the member-states; the same principle governs the putting into force of the General Agreement as well as the development and application of the law within the framework of GATT as an international organization;

f) The nature of the problems dealt with in the book by Prof. J. Kolasa calls for their analysis on the basis of many examples; the law of international trade embodied in the General Agreement and created by GATT is a living phenomenon which acquires real shape and dimension only when put into practice by states in their mutual relations.

Of all above mentioned premises only the first may give rise to some objections. Starting from it, the author discusses in a general way the law-creating powers of GATT along the pattern of international organizations and reviews the statutory clauses concerning the settlement of disputes in the various Charters of the UN Specialized Agencies. All this is rather superfluous, for as it appears the

specific nature of the creation and application of the law within the framework of GATT is such, that it can hardly be compared to the solutions adopted in this respect by other international organizations. Comparisons contribute very little to the study of the problems involved.

The restriction of Part I to the problem of tariff concessions is fully justified, all the more so that in this field the legal regulation within the GATT system finds its fullest expression. However, it will be necessary to study, at some future date, the remaining law-creating activities of the Organization and, among other things, its anti-dumping code.

The negotiation of tariff concessions is dealt with by the author with due consideration of the following aspects: statutory premisses, the negotiating machinery and procedure, the incorporation of the lists of concessions into the General Agreement and the economic consequences of the negotiations. The most important problems in this respect is the way in which the mutual interests of the states participating in these negotiations are being articulated and balanced. Quoting the example of tariff concessions the author presents "a new method of creating international law". The process "is composed of two various ways of creating treaty norms, representing a combination of the bilateral and multilateral method" (p. 33).

The study into the legal nature of tariff concessions boils down, in the first place, to the definition of the role and participation of GATT in the tariff negotiations. The author arrives, among other things, to the following general conclusions: the negotiation of tariff concessions represents a process *sui generis* of creation of rules of international law within the framework of GATT, "the tariff concessions, following their incorporation into the

text of the General Agreement become formally an integral part of the system of legal rules of that Organization" (p. 43). The law of international trade as created by GATT has specific features. Prof. J. Kolasa examines them from the point of view of the stability of tariff concessions, of their modifications and withdrawal as well as of their incorporation into the concession schedules. It may be argued that he attaches to great weight to the argumentation that the law created as a result of the negotiated tariff concessions represents law enacted by GATT as an international organization. For, whatever the view adopted on the matter, the most important thing remains the manner in which these tariff concessions are binding the member-states. As demonstrated by the author himself, not only the machinery of law-creation within the framework of GATT but also the application of the law bear the characteristics of legal norms arising out of bilateral agreements. This concerns the rights which the states reserve to themselves as regards the negotiated tariff concessions (the right to modify these concessions and the right to withdraw).

According to the premisses adopted by the author, it is the system of consultation and conciliation discussed in Part II by which the effectiveness of GATT as an organization is to be judged. In Chapter I the author demonstrates that the majority of the fundamental provisions of the General Agreement foresee the application of a more or less elaborate consultation system. Following actual practice, he rightly distinguishes between consultation *sensu stricto* and conciliation and deals with these problems separately in two consecutive chapters of Part II. The analysis of the consultation and conciliation procedure form the point of view of the solutions adopted by

the General Agreement and from the point of view of their institutional development in the course of their application, together with a wealth of practical examples, cover the major part of the book (pp. 71—165).

The essence of the obligations constituting the law of international trade is their particularly close connection with the vital interests of states. That is why the manner in which these obligations are respected depends very much on the balance of benefits accruing to states from their acceptance of a common code of conduct in international trade. The balancing of benefits in international relations cannot be accomplished through a system of settlement of disputes of a judiciary nature with its characteristic sanctions. The only appropriate solution is that of consultation and conciliation by which the fundamental principle of GATT, namely the balancing of mutual rights and obligations and, hence, the principle of reciprocity and mutual benefits is being implemented in practice.

Prof. J. Kolasa demonstrates that the whole GATT system is imbued with consultation and conciliation procedures, that the principle in force is that of prior recourse to consultation before preceding to the stage of conciliation, i.e. to a procedure followed by the contracting parties as an organ of GATT. A careful and detailed analysis of the practice led the author to numerous conclusions and observations. Among other things, he demonstrates that "conciliation as a separate method of settlement of disputes has developed [...] and acquired a fuller meaning only through practice" (p. 162). Discussing fundamental conciliation procedures (Articles XXII and XXIII) and quasi-conciliation procedures (Article XII) the author draws the attention to the development of special institutional forms (panels of

independent experts) and analyses the decisions taken in such matters as the unequivocal establishment of the fact of the violation of obligations arising from the General Agreement or of the infringement of the benefits accruing to a contracting party of GATT directly or indirectly from the whole GATT system. Special attention is paid in the analysis of the way in which the contracting parties are formulating recommendations as to the manner of settlement of the dispute or of the restoration of the balance of benefits. The only sanction at their disposal is the right of the injured party to withdraw in its relations to the party guilty of the violation of an obligation, or of the mutual balance of benefits of its own obligations arising from the General Agreement. In actual practice, GATT demonstrates considerable initiative as regards control over the implementation of its own recommendations; such a control is, generally, sufficient and effective.

Consultation and conciliation represent a particularly impressive machinery within the framework of the General Agreement. As rightly pointed out by the author, one of the main purposes of the GATT is "the settlement of disputes and the balancing of mutual rights and obligations of the contracting parties" (p. 172). One cannot but share his opinion that without its system of settlement of disputes GATT "would be unable to function" (p. 172).

The importance of the reviewed book can be judged at least from two points of view. First, from the point of view of its place in the Polish literature dealing with the problems of GATT and, second, from the point of view of its study of the problems of the law of international trade.

The book represents a major contribution to Polish literature on the

subject, since it offers the first comprehensive study of all legal problems concerning the functioning of GATT. It merits therefore our highest appreciation. The author analyses thoroughly the form and substance of both the tariff concessions and of the consultation and conciliation system illustrating his view with the aid of examples taken from actual practice. His sources, apart from a very rich bibliography in foreign languages mainly, include to a great extent official GATT documents.

The author displays, and quite rightly so, a very cautious approach to the theoretical problems of the law of international trade. The question of the essence and nature of the law of international trade within the system of international public law had, so far, not been studied in a comprehensive way. That explains why J. Kolasa refrained from formulating fundamental views on the subject, putting the main emphasis on the analysis of the nature of the law of GATT, rightly assuming that in doing so he contributes in his own way to the enrichment, of our knowledge of the general law of international trade. It is in this context that the final opinion of the author, namely that unlike the "rigorous" conception of the law in general, the law of the General Agreement can be characterised as "soft" and "flexible" is to be viewed. This results from various exceptions and special procedures which make it possible to adapt the obligations arising from the law of the GATT system to the changing circumstances and special needs of the contracting parties and to strike a proper balance of the mutual interests of the parties concerned.

by Andrzej Całus

Halina NIEĆ, *Ojczyzna dzieła sztuki. Międzynarodowa ochrona integralności narodowej spuścizny kulturalnej* [*The Proper Country of the Work of Art. International Protection of the Integrity of the National Cultural Heritage*], Państwowe Wydawnictwo Naukowe, Warszawa—Kraków 1980, pp. 211.

The title of the book is somewhat mysterious. The contents is explained rather in the subtitle which, however, looks too clumsy to be put on the cover of a 20th century book. The merit of the title, as finally adopted, merely consists in stressing one of several aspects under which the author treats her subject.

The subject belongs to the vast field of international cultural relations, rarely touched upon by internationalists too busy to cope with either political or economic problems to care at the same time for that, perhaps indeed younger, branch of intercourse between nations. It was thus rather left to those who, versed perhaps in art or archaeology, seldom have any legal training.

The author's research covers a very broad field extending, over the realm of law — both national and international, to that of other social sciences, chiefly sociology. Her main concern is the defence of cultural property against illegal transfer of property and illegal exportation and, in consequence, the difficult problem of what means, if any, are at the disposal of those endeavouring to recover such works of art or historical relics as have been the object of illegal dealings.

In her Introduction (pp. 5—13), Dr. Nieć suggests that, from her point of view, states, whatever other divisions, could roughly be divided in two groups: exporters and importers of cultural property. It is the clash of interests between these two groups which, for a long time, has been preventing any viable international agreement.

As for the term "cultural property"

(French *biens culturels*), which was first introduced in the 1954 Convention on protection of such property in armed conflict and later repeated in many other treaties, also in the 1970 Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (later to be briefly referred to as the "1970 Convention"), the author very ably points out the essential difference between the two, apparently analogous, definitions of the term. The first is meant to be exemplary (*inter alia*), while the second is exhaustive ("closed" in Dr. Nieć's qualification).

The main body of the book is divided into four chapters, each dealing with an essentially different aspect of the problem.

Chapter 1 (pp. 13—50) deals with the legislative patterns of the protection of cultural property. There are, according to the author's data, 132 states in which special legislation restricting the transfer of ownership and export of cultural property has been enacted and Dr. Nieć chooses for a detailed analysis only those which she considers to be typical of a whole group of countries. These are: France and Britain for Western Europe, Soviet Union and Poland for the Eastern, Syria for the Middle East, Japan for the Far East, Malawi for Africa, Mexico and the United States for America. Each selection is a matter of personal taste of the author and as such may be open to discussion. In Dr. Nieć's case, especially the omission of Italy, country in which the problem had first been regulated, as well as the choice of Malawi as a typical African country are likely to raise doubts

Most of the laws concerned have a purely administrative character and as such often proved ineffective before a foreign court rather inclined to take into account the traditional civil law principle "*en matière de meubles, possession vaut titre*", also to apply its own law. In some cases, a domestic law rule was considered to be contrary to a regional engagement of the country concerned (the case of Italy where taxes must be paid if a work of art was being exported, which the European Court of Justice found to be contrary to Article 16 of the EEC Constitution). Hence most governments to obtain the desired effect are rather inclined to negotiate. It is then that the problem passes into the realm of international law.

Chapter 2 (pp. 51—100) dealing with the international law aspect of the problem, is divided into two parts. The first tells the story of everything which was achieved or endeavoured before UNESCO was founded. Such endeavours were rather timid, especially in comparison with the pace at which the law of armed conflict was being codified. The only endeavour actually brought to an end, was the so-called Roerich Pact signed in Washington in 1935 which provides for the protection of works of historical value, both in time of war and of peace, in mutual relations between American states. Endeavour undertaken on a broader scale were conducted under the auspices of the International Office of Museums but, when they were approaching the concluding phase (each of the phases being more modest in scope than the former), World War II broke out and all codificatory work had to be suspended.

The creation in 1945 of UNESCO, a specialized agency for promoting international cooperation in the field of education, science and culture, was

indeed a turning point also for such endeavours as were meant to bring about an international protection of the cultural heritage of nations, highly endangered especially by illegal exports.

A resolution to regulate archaeological excavations, voted as early as 1956 at the 9th General Conference, was to be a prelude to far broader codifications soon to be undertaken by UNESCO. The progress in this field was perhaps more rapid than could be expected. In 1963, when the problem of preventing illegal exports and imports as well as of illegal transfer of ownership of cultural property was first put on the agenda of the 11th General Conference at the request of Mexico and Peru, it hardly appeared possible to achieve anything more than another recommendation on the subject. The divergence of interests between the countries which were particularly interested in preserving their national heritage from illegal exports and countries whose collections were being enriched in consequence of precisely such exports seemed too great to be overcome by way of a multilateral convention. Yet, hardly five years later, in 1968, it was precisely a convention which was suggested, soon drafted and, on 17 November 1970, eventually adopted by the 16th General Conference of UNESCO. The author ascribes this achievement to the balance that gradually, by way of patient negotiations, was established between the interest of the preservation of national heritage and that of admitting free exchange of cultural values among peoples. The Convention achieved this balance i.a. by dividing the responsibility for preserving national heritage between both parties to any given case. Both are henceforth obliged to introduce proper legislative and administrative measures. In consequence, the import of cultural property is only then allowed when export was properly

authorized. On the other hand, the recovery of the object by the claimant is made viable if the interests of the innocent acquirer have also been guaranteed.

In Chapter 3, (pp. 101—142), Dr. Nieć passes from the realm purely legal into that of sociology with which she seems to be adequately acquainted. The title of the chapter (*Subjects of the Right to Cultural Property*) is somewhat equivocal as, at first, it is not quite clear whether individual objects of cultural value are meant, or all such objects as a whole. The author must have in mind, however, the latter only as she does not touch at all upon the question of ownership of particular objects by individuals. She limits her analysis to "collective" subjects only, in the following order: nation (people), state, mankind, international organization (I am parting ways here with Dr. Nieć who in the title of the subchapter concerned mentions UNESCO only which, to my mind, is not the logical counterpart of the formerly mentioned three categories). The exact meaning of the first category is not easy to explain here as there seems to be an unsurmountable divergence between the semantic value of the English term *nation* and the Polish term *naród* as employed by the author. *People* rather are meant here since, according to Dr. Nieć, the category concerned, essentially a sociological one, found its place among the subjects of international law with the introduction, in Article 1, paragraph 2, of the Charter of the United Nations, of the "right of self-determination of peoples". On the other hand, *nation* is meant, also in the English acceptation of the term, when the subsequent category: state is analysed. The author speaks, in that context, of two groups of *nations*: those who *already* possess a state of their own, and those who have *not yet* achieved it. In the latter case,

says Dr. Nieć, the state "administering" such nation is obliged to care for the preservation of that nation's cultural heritage. It is from the right of this group of nations that Dr. Nieć derives the claim for restitution as recently put forward by some of the Third World countries. She whole-heartedly supports it. Mankind — according to Dr. Nieć — not to be identified with either the international society or the community of nations (or of states), should be meant to comprise all individuals, both those actually living and those to come. As *Mankind* as such can hardly exercise any rights or fulfill any obligations, it has to be represented, on the legal level, by an international organization. For our (and Dr. Nieć's) purposes, the rights and obligations concerned are vested in UNESCO. The author analyses various tasks of this organization which are of two kinds: legislative (covering both conventions and recommendations) and operative, organizing international aid in specific cases in which an object of paramount value is endangered. Dr. Nieć touches in this context upon the notion of "world cultural heritage" comprising such cultural property as is of interest for mankind as a whole. This difficult problem was dealt with in the 1972 Convention on protection of world cultural and natural heritage, another act of paramount importance which the author analyses and comments upon.

However, as both the title ("The Essence and Scope of the Right of a State to Cultural Property") and the content of Chapter 4 (pp. 143—184) convey, Dr. Nieć considers the right of the state to have priority over that of any other subject. This right, according to her, consists of two aspects: the right to keep any object belonging to the national heritage within its territory, and the right, of such object left this territory, to claim its resti-

tution. The question arises, however, which objects can be considered as belonging to the national heritage. Dr. Nieć notes several criteria (mostly reflected in Article 4 of the 1970 Convention), such as nationality of the artist, place in which the work concerned originated, or place in which it is situated. She recognizes that there may be cases of conflicting claims and suggests to apply then the criterium of the "effective link", similar to that established by the International Court of Justice in the *Nottebohm Case* as to the nationality of individuals. For indeed some kind of nationality of the cultural property in question should be established to settle any such conflict. And this is perhaps, Dr. Nieć's most important conclusion.

On her way to reach it, she touches upon several connected problems, such as the problem of reconstitution of such cultural property as has been dismembered, the problem of public property, and others. She also shows how, on the margin of multilateral treaties, much already has been achieved on either bilateral, or regional level (e.g., in the frame of the Comecon, of the Council of Europe, or of the Organization of American States). All this leads her to conclude that there already exists, as a general principle of international law, the "sovereign right to cultural property".

Dr. Halina Nieć's book is a scholarly work based upon solid documentation, especially of UNESCO, and upon

extensive literature pertaining to various branches of law and political science.

For some minor deficiencies, incompleteness of certain conclusions, sometimes lack of examples confirming such or such other argument, also lack of illustrations which in a book pertaining to the realm of art would have been most welcome — the publishers should bear the responsibility. Afraid that the monograph devoted to a rather special topic would not find too many buyers, they exercised upon Dr. Nieć a restrictive influence.

In this they were wrong. The book has indeed a great value, not merely scientific. It should raise an equal interest among lawyers dealing with any aspect of the protection of cultural property, whether in domestic or international law, also among historians and art historians, finally — last not least — among any civilized people who care for the preservation of the cultural heritage both of individual nations and of mankind as a whole.

The fact that the book so far was only published in Polish limits of course considerably the circle of its potential readers. A foreign publisher would be well advised to have it translated and published in one of the main world languages, preferably English. There exists hardly any book on the subject to match the masterly work by Dr. Halina Nieć.

by Stanisław E. Nahlik

Odpowiedzialność państwa w prawie międzynarodowym, red. Renata SONNENFELD [The Responsibility of States in International Law. Selected Papers, edited by Renata Sonnenfeld], Warszawa 1980, Polish Institute of International Affairs, Library of "International Affairs", No. 71.

The publishers must be praised for the initiative they took, considering the widening of state responsibility to cover new important spheres of inter-

national relations, the wealth of material amassed in the course of codification work, the new emerging trends, the controversial problems and

the lack as yet of comprehensive studies of the subject.

The reviewed book is composed of eight papers dealing with both general theory of state responsibility and actual practice.

The most comprehensive paper by Renata Sonnenfeld is devoted to the general principles of state responsibility. It constitutes a monograph which provides the reader with an overall, well documented discussion of the present state of science and codification work in this field. She has studied the principal elements of state responsibility, its objective scope, the concept of the act of state and the legal effects of responsibility.

When examining the subject of responsibility special attention has been paid by the author to the controversial idea of state responsibility to the entire international community, which — in her opinion — the International Law Commission has recognized as a passive subject of responsibility (p. 20). As regards the question of the sources of responsibility, emphasis has been placed on its independence of legality under municipal law and on the responsibility of a state for lawful action. When dealing with the crucial question of conditions of responsibility, the author has devoted particular attention to the controversial requirements for the existence of damage and to the fault of state organs. She has stressed the tendency to single out among the actions violating international law such deeds which are often qualified as "international crimes". She thinks that the normative definition of responsibility for such deeds "can greatly contribute to the strengthening of the principle of peaceful coexistence of states" (p. 48).

The chapter entitled *The Act of State* discusses the question of whose acts can be ascribed to the state and, in particular, of the circumstances in

which the state can be held responsible for acts committed by unauthorized organs and even by private persons.

Considering the controversies arising from the various interpretations of the consequences of responsibility and sanction, the author sees the origin of such controversy mainly in the identification of the effects of responsibility with those of delinquency rightly pointing out that they are "two separate legal institutions" (p. 77). However, when dealing with international crimes she tends to overlook these differences, for she fails to include among the consequences of such crimes as well as of responsibility for them such things as, for example, the right to apply reprisals or the right to take preventive measures (p. 79). It seems that in order to remove this notorious ambiguity in science when using the concepts of sanction and consequences of responsibility it would be also advisable to take into consideration the differences of the subjects acting in both cases.

The second paper, by Henryk de Fiumel, discusses the highly topical and important problem of financial responsibility of the member-states of the Council for Mutual Economic Assistance in the context of economic cooperation of the socialist states. The paper represents a synthesis of the results of research carried out by the author and published in 1979. He has studied the concept of financial responsibility of states, the circumstances of its emergence, its importance within the framework of the CMEA, the legal nature of obligations whose violation results in such responsibility, its forms and the problem of settlement of disputes.

The author has devoted particular attention to the crucial and at the same time controversial problem of the mutual relation between the financial responsibility of states and of their

economic organizations (enterprises); he rightly criticizes the views which exclude the responsibility of states when there is a civil law responsibility borne by their economic organizations. When dealing with the forms of responsibility, the author has discussed extensively such forms which strictly speaking represent neither restitution nor compensation for sustained losses. He is certainly right in refusing to recognize as a form of responsibility the right of a contracting party to non-execution of an obligation, which is a form of sanction (p. 119).

The next paper by Barbara Kwiatkowska-Czechowska *Responsibility of a State Arising from the Exploration and Exploitation of the Sea-Bed and Ocean Floor*, deals with a new important sphere of responsibility which, however, still remains in the realm of postulates and proposals.

The author has covered all aspects of the problem she bases her findings on a wealth of source material and literature and leads the reader to a series of very convincing conclusions. It is, however, difficult to agree with her when she accepts without reservations the view by Levy that "there can be no question of non-execution of obligations when a state has no sufficient means to carry them out" (p. 143). The lack of means to carry out freely accepted obligations (and only such obligations can be considered under international law) cannot free from responsibility, unless there is a case of *force majeure*.

Iwona Rummel-Bulska has devoted her paper to responsibility caused by damage resulting from water and air utilization. There is already a relatively rich practice of this kind of responsibility, especially in the field of water utilization. Its regulation, however, is still far from satisfactory. The problem boils down mainly to the determination of the scope of ap-

plication of general principles, especially to the application of the principle of good neighbourly relations, which has replaced the old principle of absolute territorial sovereignty.

The author comes to the conclusion that responsibility resulting from water and air utilization has been becoming broader and broader and is increasingly taken into consideration in agreements, embracing to a larger and larger extent objective responsibility. Considering, however, the frequent impossibility to determine the author of the damage, there is also a tendency to establish special funds to finance compensation. It should be added here that this conclusion is based mainly on experience resulting from water utilization, since the practice related to air is yet very poor.

The most recent sphere of state responsibility arises from the utilization of outer space. The task of K. Wiewiórowska, the author of the next paper, has been relatively easier in comparison with the previous ones, since there is an international convention on responsibility for damage caused by space objects. The paper deals, however, also with other means of outer space utilization, such as direct satellite television transmission and satellite teledetection whose regulation still encounters various obstacles. In view of the fact that outer space is being used by various governmental and non-governmental institutions, K. Wiewiórowska has paid much attention to the subjects of responsibility in this field.

The unique solutions adopted for responsibility for nuclear damage have been summarized by Z. Brodecki. The international rules in force deal above all with civil law responsibility, which, in the author's opinion, is insufficient. State responsibility for nuclear damage must be of public nature, because the concept of damage in civil

law fails to take into consideration so-called anonymous damages, that is among other things, damage to the natural environment. This is no doubt a very pertinent argument. On the other hand, the shortcomings of public law responsibility arising especially from its low effectiveness because of the lack of executive power, must not be overlooked. Furthermore, damages done to the natural environment are very quickly losing their anonymous character.

The topics of the remaining two papers partly overlap for state responsibility in the sphere of international protection of cultural property is to a great extent included in state responsibility in armed conflicts. In both cases, above all, responsibility under international law based on the general principles for the violation of codified rules or on certain provisions of peace treaties comes into play. Common are also existing single provisions directly concerning responsibility, such as for example, Article 3 of the IV Hague Convention.

Prof. S. E. Nahlik, who has confined himself to the problem of responsibility for the protection of cultural property, divides it into two parts: "problems of times of armed conflict" and "problems of times of peace". First, he has discussed the origins of international protection of cultural property and presents his own interpretation of the 1954 Convention. Next, he has dealt with the topical and at the same time very complex problem of responsibility for the protection of cultural property and mainly of the entire world cultural heritage in time of peace. He has arrived at the conclusion that this responsibility, in particular

for the protection of the national cultural heritage, will require "an important modification in the concepts of international law now in force" (p. 291). It should be stressed that the value of Prof. Nahlik's study is due not only to its subject, which is of particular interest in our country, but also to the outstanding competence of the author in this field of international law.

In his paper Prof. Remigiusz Bierzaniek has concentrated his attention on some fundamental problems of state responsibility in armed conflicts in general and in particular on the responsibility of the state for acts of its armed forces and on the responsibility for acts committed on its territory by foreign armed forces. The latter problem is of special importance today, because of the cooperation of armed forces of various states within the framework of actions undertaken by the United Nations or by defensive alliances. The author deals also with the concept of grave violation of the law of armed conflicts and with the very controversial problem of penal responsibility of states. Prof. Bierzaniek concludes that such penal responsibility has no foundation in positive law nor in doctrine (pp. 321—322). The principal merit of his study lies in pointing to new aspects of state responsibility in armed conflicts.

It is impossible even to enumerate here all the very interesting problems and conclusions which can be found in the reviewed papers. They will certainly be a useful guide for students and scholars studying the problems of state responsibility.

Karol Wolfke

Renata SONNENFELD, *Uchwały Rady Bezpieczeństwa ONZ — zagadnienia prawne* [The Decisions of the UN Security Council — Legal Problems], Polish Institute of International Affairs, Warszawa 1979, p. 196.

Dr. Sonnenfeld has undertaken a very interesting and ambitious scientific task, that of studying the decisions of the UN Security Council from the point of view of the procedure of their adoption, as well as from the point of view of their scope and legal nature. That important problem has, so far, not been studied in depth and there is no comprehensive monograph on the subject in the literature of international law. The study by Dr. Sonnenfeld represents an attempt to fill that gap.

The problem is very complex, both in view of the research methodology and in view of general theory. The author was fully aware of these difficulties and tried from the very outset to define clearly the scope and objective of her study. In order to present as far as possible a full picture of the subject under study Dr. Sonnenfeld decided to cover the following legal problems: 1) the place of the decisions taken by international organizations in the general system of international law; 2) the procedure applied in the decision making process by the UN Security Council; 3) the scope of these decisions; 4) their binding force and legal nature. These are well selected and in fact the most important problems which constitute the overall legal picture of the decisions taken by international organizations in general and, in this case, by the Security Council which is one of the major organs of the United Nations. It goes without saying that the choice of the Security Council was not accidental, for the Security Council has clearly defined powers in the UN Charter to adopt decisions binding on member-states and even on non member-states.

The book follows the line set out

by the scope and objective of the study. The material has been arranged in a clear and logical manner. Dr. Renata Sonnenfeld has dealt with the concept of decision adopted by international organization in a general sense and examined against that background the legal basis of the powers of the Security Council to adopt decisions in general and, in particular, to adopt decisions binding on member-states (see Chapter entitled *Decisions of an International Organ in the Legal System*) Next has examined the procedure of adopting decisions by the Security Council (see Chapter entitled *The Names of Decisions of the Security Council and the Procedure of their Adoption*) and the scope of these decisions (see Chapter entitled *The Scope of Decisions by the Security Council*). Having thus cleared the ground she can, in the last Chapter proceed with a detailed consideration of the problems connected with the binding force of the Security Council decisions. This is no doubt the most important, and most difficult section of her study. The book closes with some general conclusions. The annexed are a comprehensive summary in English and a carefully selected bibliography.

The author has displayed great scholarship and clarity of style. She is familiar with the extensive literature published on the subject and she studied carefully the rather intricate procedure and practice of the Security Council. A large part of her considerations is taken up by a detailed analysis of the Security Council resolutions supplemented by extensively quoted opinions of the International Court of Justice and the UN Administrative Tribunal. Her views are there-

fore based on a through analysis of all available sources and on a broad theoretical erudition. The principal findings and general theoretical ideas seem to derive quite naturally from the analysis of the practice of the Security Council and are rooted in the achievements of world legal science. What merits particular emphasis is the persistently followed scientific method of continuous confrontation of the statutory provisions with the day-to-day practice of the Security Council. This is reflected, in particular, in the final Chapter, in which the author tries to ascertain the legal binding force of the decisions of the Security Council successively in the light of the UN Charter provisions, of the discussions which took place during the preparatory conferences, in the light of the systematic interpretation of the Charter, the practice of the Security Council and the advisory opinions of the International Court of Justice. Having done this, Dr. Sonnenfeld tries to suggest her own general conclusions. At the same time, and in contradistinction to some writers on legal problems of international organizations, she is aware of the necessity to take into consideration the developing rules and practice of customary law. These elements complement and enrich her presentation of the subject.

It is quite understandable that a study devoted to such complex legal problems contains together with many cogent and interesting ideas some opinions which are debatable. Thus, for example, the author's views on consensus in the decision making practice of the Security Council are utterly unconvincing (p. 78—79). It is difficult to agree that "in the practice of the Security Council there are several methods of reaching decision or adopting resolutions by consensus, while a resolution agreed upon by consensus (!) is often submitted to a formal vote"

(p. 78). It is hard to see how it is possible to reconcile the adoption of a resolution by consensus with a subsequent vote on it.

Objections can be raised also against the author's assertion that: "Overall, there are more arguments [...] in favour of the opinion which, at the present stage of development of international organizations, treats the normative resolutions as executive acts of the basic treaty and, hence, as being part "sensu largo" of the law of treaties" (p. 26). Thus, in spite of the generally accepted view the author seems to deny the emergence of a new source of international law represented by the resolutions of international organizations.

Debatable as well seem to be the author's considerations concerning the nature of resolutions adopted by international organizations as law-making acts authorise the contention that she identifies the binding force of these resolutions with their law-making character. Dr. Sonnenfeld states, that: "Assuming that all binding resolutions constitute legal norms and in that sense create law, I take them to be a source of law; they can play either a confirming or interpreting role towards an existing legal rule as applied in concrete cases, or constitute new rules and principles which can create general or particular international law" (p. 31).

As it seems the binding force of resolutions of international organizations, including the resolutions of the Security Council cannot be tantamount to the granting to these organizations of law-making powers in the generally acceptable meaning of those terms. Binding resolutions are not necessarily law-making acts. For instance a decision adopted in the form of a resolution concerning the admission of a state to an organization or the rejection of such an application is not a law-making act

which can be covered by the concept of general and abstract rules.

These critical remarks cannot detract from the general value of the study under review. The book is of real scientific importance, contains many new and well documented ideas

which are of value for the theory and practice of international organizations and, hence, for the science and practice of international law in general.

by Jan Kolasa

Janusz SYMONIDES, *Wychowanie dla pokoju [Education for Peace]*, Warszawa 1980, Książka i Wiedza, pp. 301.

It was the Declaration on the Preparation of Societies for Life in Peace adopted by the UN General Assembly on the 15th December 1978 which, most probably, prompted the author to write this book. It may be recalled that the Declaration was adopted on the basis of a Polish initiative and of a Polish draft. It is therefore quite natural that the first comprehensive study on the subject was published in Poland. Prof. Janusz Symonides was, no doubt, predestinated to embark upon such an undertaking, being one of the leading figures (and now the head) of the Polish Institute of International Affairs, which is very closely associated with the planning and implementation of Polish foreign policy and concentrates its major attention on the study of new problems which are likely to shape future events.

The author begins with an analysis of the Polish initiative and the efforts of Polish diplomacy to get the idea accepted by the UN General Assembly; he continues with an analysis of the Declaration, of its aims and purposes, of its main provisions and discusses also the implementation of the idea of education for peace in Poland.

But first he looks for the ideological origins of the Polish initiative. He refers to the political and legal theories of Stanisław from Skarbimierz and Paweł Włodkowic, to their original ideas concerning peaceful coexistence of Christian and pagan states, to their

precursory doctrine of just war as the only admissible, to their glorification of peace which permeates their writings. The ideas formulated by these eminent philosophers became the official position adopted by the Polish delegation to the Council of Konstanz (1414—1418). Paweł Włodkowic, rector of the Kraków University was present at the Council and took an active part in its deliberations.

Prof. Symonides refers also to the pacifist traditions of the Polish humanistic philosophers of the 16th century with their ideas concerning the organization of international relations. He pays great attention to the most eminent figures of the Enlightenment era and to the memorandum on the strengthening of universal peace which was created at that time with considerable interest. Its author was a great Polish statesman of the Enlightenment era, Stanisław Leszczyński, twice elected king of Poland (1704—1709 and 1733). Overthrown as a result of foreign intervention, Leszczyński was invited to live in France by his ally King Louis XV where he became Duke of Lorraine.

In 1773 the Polish parliament established the Commission of National Education which was the first ministry of education in Europe and probably in the world. In less than 20 years the Commission created an entirely new educational system imbued with the best ideals of Enlightenment. Analysing its activities as well as the

contents of the textbooks published at that time, Prof. Symonides concludes that the Polish Commission of National Education created a system which we ourselves could name as education for peace.

In his search for the origins of the Polish initiative, Prof. Symonides refers also to the inter-war period and, especially to the concept of "moral disarmament" which was formulated in the memorandum of the Polish government to the Secretary General of the League of Nations (September 23, 1931).

The Polish memorandum proposed that the internal legislation of the states be subjected to the then freshly adopted principle of renunciation of war. It asked for, among other things, the prohibition and punishment of war propaganda, the prohibition of the use of the press, radio and film for the purposes which may affect adversely peaceful relations among nations (including a proposal to set up an international disciplinary court), the adoption of measures in order to educate the young generations in a spirit of understanding and cooperation.

Discussing the premisses of the Polish initiative on the preparation of societies for life in peace, Prof. Symonides draws attention to two aspects. The first concerns the basic tenets of the Polish political and social system, including the provisions of the Polish constitution (for example, the provision on peaceful coexistence), and of various laws (for example the prohibition of war propaganda). The second aspect refers to the historical experience of the nation, including the danger of biological extinction which became imminent during the Nazi occupation.

These and the former traditions of Polish political and social thinking account for the activity of the Polish state and its diplomacy, of its various social organizations in the search of

ways to ensure a stable peace. The draft declaration on the education of societies for life in peace was not the fruit of abstract thinking, neither was it an accident that the subject had been taken up by the Polish government. Prof. Symonides projects the concept of education for peace on a very broad historical background and tries also to uncover its roots in the very nature of the contemporary Polish state. He discusses therefore quite extensively the political and diplomatic activity of Poland in the post-war period. He describes its participation in the struggle for peace and international cooperation in a concise but comprehensive way.

As seen by Prof. Symonides, the Polish draft declaration represented a natural sequel to the prewar and postwar efforts of Polish diplomacy, a crowning of all Polish endeavours to strengthen international security, to create conditions conducive to the development of friendly relations among nations. The draft proposal was submitted officially to the XXXII General Assembly of the United Nations on September 28, 1978. The Declaration was adopted by the General Assembly, with many amendments on December 15, 1978.

Taking into consideration the political importance and scope of the document, it may seem surprising that the "world parliament" spent so little time on its discussion. It must therefore be recalled, and this is done by the author, that before presenting officially the draft declaration to the General Assembly Polish diplomats consulted the matter for several years bilaterally with other delegations to the General Assembly as well as during the preparatory discussions which led to the Helsinki Conference on European Security and Cooperation. The idea itself of educating the peoples in a spirit of peace was first presented

to the international community in a speech which Edward Gierek made at the XXIX session of the General Assembly of the United Nations in 1974.

Of interest are the observations made by Prof. Symonides on the diplomatic battle which had to be waged in order to ensure the adoption of the Polish draft declaration on the broadest possible basis and with the support of all member-states of the United Nations. It may be recalled that the Declaration was adopted almost unanimously. There were no votes against and only two abstentions. Unfortunately, one abstaining vote was cast by a big power — the United States. The US delegation while not questioning the merits of the Declaration itself, invoked difficulties of a constitutional nature, claiming also that — in its view — no sufficient attention is being paid to human rights. The other delegation abstaining was that of Israel, which up to the last minute maintained a favourable attitude towards the draft declaration. Very probably its final stand was not dictated by substantive considerations but rather by a desire to manifest its solidarity with the US.

In spite of that, the Secretary General of the United Nations, Kurt Waldheim judged the result of the vote as "outstanding". He stressed also the importance of the intensive consultations which preceded the adoption of the Declaration and praised the role played by the Polish delegation. Prof. Symonides quotes many statements by representatives of states representing various social, economic and political systems and coming from all parts of the world the opinions of the representatives of Saudi Arabia, Bulgaria, Canada, Peru and the Holy See, which reflect not only the support for the Declaration but also the recognition of its great humanitarian values.

Prof. Symonides has devoted a

major portion of his book to the analysis of the Declaration. He has discussed its main characteristics and objectives, drawing the attention to the principles which states must follow in their endeavours to educate for peace. He has considered some practical problems connected with the implementation of the Declaration.

The author draws our attention to the various definitions of peace. Some favour a very restrictive definition of peace as the mere absence of war. But there is also a broad definition which covers active cooperation aiming at maintaining a lasting and just peace. Prof. Symonides has stressed that the Declaration is based upon this broad definition. Consequently, its idea of education for peace is not restricted only to certain prohibitions (for example, the prohibition of war propaganda). The Declaration proposes a large and diversified programme aimed at fostering international understanding and friendship among nations.

The point of departure of that programme is the *expressis verbis* formulated "inalienable right" of each nation and each human being "to live in peace". Prof. Symonides proposes a very interesting interpretation of that right, which he treats as "the general synthesis of many international norms and principles". This is of major importance, since "the right to live in peace" was first included in such a wording in the Declaration, hence the need of an appropriate interpretation. All the more so, that it appears necessary to establish for that right a stronger normative basis, and in particular to translate that right into treaty language, since — as it is well known — the Declaration is nothing more than a recommendation addressed to states.

The merit of the author's considerations lies in the demonstration of the links between the concepts introduced by the Declaration and the main

currents in the development of modern international law. He confronts the provisions of the Declaration with various resolutions adopted by the United Nations, with the Final Act of the Helsinki Conference, with various international treaties. Thus, the Declaration appears as a successive step on the road leading towards the consolidation of the international principles of peaceful coexistence. In turn, this facilitates also the solution of some problems arising from difficulties of definition.

The author's original contribution is his presentation, for the first time in Polish literature — of the implementation of the idea of education for peace by Poland. Prof. Symonides has collected and studied a considerable amount of facts and documents. The information and analysis concern, in particular, the system of education, the

function of culture, literature and art, the impact of the legal system. In the sphere of Poland's external relations he has discussed Poland's participation in all international endeavours in the field of science and education (for example in the field of verification of school textbooks), culture and information. Briefly mentioned are also Polish peace research activities.

All this leads the author to a conclusion which I would like to quote at this juncture. Here are his words: "The role of Poland as the initiator of the Declaration cannot be considered as reflecting only the country's foreign policy. [...] As the main author of the Declaration Poland offers to the international community an original and exemplary model of its implementation".

by Andrzej Wasilkowski

Jerzy TYRANOWSKI, *Sukcesja państw a traktaty w sprawie granic* [The Succession of States and Treaties Concerning Boundaries], Poznań 1979, Wydawnictwo Naukowe UAM, p. 274.

The lasting importance and topicality in international relations of the problem of state boundaries compounded by the particular immediate interest of the questions related to the succession of states is sufficient enough to attract our attention to the book just published by Dr. Jerzy Tyranowski. All the more so, that it is the first monograph in world literature to deal with the subject. One may add also that it represents the first attempt to compare the conclusions arising from the practice of states and from the development of legal doctrine in this field with the findings as embodied in the codification work of the UN International Law Commission. (The author could not take into consideration in full the work of the Vienna

codification conference; this, however, does not detract from the value of his book, since the conference introduced only small changes in the draft prepared by the International Law Commission).

Although legal doctrine is generally aware of the specific nature of the problem of succession of so-called dispositive, localized or territorial treaties including, above all, boundary treaties, it is equally true that this awareness was rather superficial. The book by Jerzy Tyranowski takes a much broader and complex view of the problem. And this is not contradicted by certain opinions expressed by the author which are, at least in my view, quite controversial.

The book is composed of four

chapters. The first two are of an introductory nature. Chapter I deals with the fundamental problems arising from the succession of states and the succession of treaties. Accepting as a basis for his considerations the codification works of the International Law Commission the author makes a distinction between the concept of succession of states which is tantamount to the assumption of sovereign rights over a territory remaining previously under the sovereignty of another state, and the concept of succession understood as the assumption of specific treaty rights and obligations. Among other things, the author quite rightly distinguishes between the succession of states and the succession of governments and points out that even a revolutionary change in the political and social system does not break the continuity and identity of a state (pp. 24–29). Hence, the consequences of such changes must be viewed in the context of the general law of treaties (adducing, eventually, the fundamental change of circumstances and not in the context of succession).

Further considerations are devoted to the concept and problem of succession to dispositive treaties. The author argues, quite convincingly, that in spite of the lack of sufficient clarity in the justification, international law is familiar with the specific phenomenon in the form of "territorial regimes" and adds: "it is possible to speak of succession *ipso iure* with respect to the treaties which create these regimes, as far as traditional cases of succession of states are concerned. However, it is doubtful whether such a succession takes place in the case of newly independent states" (p. 35).

Considering the modern general model of the institution of succession with respect to treaties, the author points out that the model embraces

both succession *ipso iure* (which can be called as obligatory) and optional succession. He is right in emphasizing that the latter can take place as a result of a unilateral act of the successor (which he calls unilateral optional succession) or as a result of an agreement reached by the successor with another party to the treaty (this could be defined as contractual or agreed optional succession). It may be added in passing that both kinds of optional succession can, in theory, take place according to the opting-out formula; such a solution was proposed in the resolution of the ILA for the newly independent states. Or pursuant to the opting-in formula as suggested in the draft prepared by the International Law Commission and embodied in the Vienna Convention on Succession of States in respect of Treaties of 1978 for the newly independent states.

Subsequently, the author has discussed the principles presiding over the succession of treaties within the framework of traditional cases of succession of states, i.e. in the case of annexation, cession, secession, dismemberment and unification as well as in the case of newly independent states. However, because of his rather summary treatment of the problem and because of certain gaps in the treatment of source material (he has omitted the discussion on the subject which took place in the International Law Commission as well as significant part of literature) his conclusion that there are certain customary rules applying in these cases is not very convincing. Reservations must also be voiced with regard to the concept of "identity of areas" (p. 53 ff) as a specific basis for succession of treaties *ipso iure*. For, as it results from the codification endeavours, foundations of the application of the concept of obligatory or optional succession must be sought, in the first place, in the fundamental

principles of international law. In the cases of succession of states (with the exception of cession) in which only treaties concluded in accordance with the principle of sovereign equality and self-determination (nobody is bound by a treaty without having expressed freely his sovereign will) have been included in the "inheritance estate", the principle which applies is that of succession *ipso iure*. On the other hand, in the case of treaties of another origin, i.e. of treaties which because of the dependent status of the territory in question applied to it for such was the will of the colonial power, the prevailing rule is that of optional succession.

In Chapter II the author deals extensively with boundary treaties. Among other things, the reader will find here some very interesting ideas concerning the concept of the extinction of a boundary treaty following its implementation. One cannot but agree with the view that "the only logical and coherent conception is the one, pursuant to which a treaty establishing a boundary does not lapse as a result of its execution" (p. 117). Quite convincing are his arguments in favour of the thesis that boundary treaties represent a separate category among treaties dealing with territorial questions (pp. 123—124 and 135).

The most important is Chapter III which contains a wealth of original ideas. It touches upon the essence of the subject signaled in the title of the book. The author points out, quite rightly, that as it would be erroneous to refer to "succession as regards territory", it would equally be wrong to speak about "succession as regards boundaries" (p. 130). As a matter of fact, in the case of succession of states which covers always a territory within well defined boundaries we are dealing with the principle of continuity (survival) of state boundaries, including

boundaries fixed by treaties. This principle has its origin in the very concept of succession of states, in the general rules of law as well as in the principle of the inviolability of frontiers and lies at the very basis of the succession *ipso iure* of boundary treaties (p. 131).

The author has discussed in detail the work of the International Law Commission on Article 11 of the Convention which deals with the problem of treaty regulation of boundary questions. He has presented also the comments offered by the states on the subject. Then he has proposed his own interpretation of Article 11 in the context of the entire framework of the provisions of the draft (pp. 156—164). In his opinion, the draft proposal of the International Law Commission does not fully reflect the customary rules in force.

In his words, the present state of customary law is as follows: the fate and functions of treaties establishing boundaries vary according to the type of succession of states. Succession *ipso iure* to boundary treaties takes place in so-called traditional cases of state succession (cession, secession, dismemberment, unification of states). Since in the case of cession and secession the obligatory succession to treaties dealing with boundaries represents an exception from the rule of non-succession of treaties concluded by the predecessor state, the rule which applies here is that of the separability of treaty provisions. Hence the successor is bound only by the provisions dealing directly with boundary regimes. In turn, the newly independent states are bound only by the principle of continuity of boundaries fixed by treaties, whereas the boundary treaties themselves lapse as a result of the succession of states (clean slate principle). As far as the practice of the African states is concerned, the author considers that the

principle of continuity of boundaries established by treaties has been replaced by the principle of *uti possidetis iuris*. In other words, it was only the agreement reached by the African states themselves which transformed the inherited boundaries from a state of fact into a state of law. This assertion is, in my view debatable.

In a review it is not possible to offer a detailed exposition of the case. Let me only point out that the main point in the controversy lies, in a different interpretation of the meaning of the appropriate provisions of the OAU Charter, of the resolutions adopted by the Organization and of the resolutions adopted by the Cairo Conference of the non-aligned states. Whereas the authors dealing with the succession of states, the International Law Commission and the states participating in the Vienna Conference tend to view these provisions and resolutions as confirming only the principle of continuity of boundaries established by treaties, the authors who write about the territory of Africa or about the territorial disputes and other African problems are inclined to attach to these provisions and resolutions constitutive effects.

Dr. Jerzy Tyranowski has developed also many interesting ideas only indirectly connected with the subject matter of his study. He has discussed the application of the principle of *uti possidetis* in Latin America in the 19th century and the problem of the influence of the succession of states on other territorial regimes. He has proved irrefutably that "the right to self-determination as the right of a people, cannot offer a legal basis for territorial revindications by one state

against another state" and that there can be no contradiction between the right to self-determination and the principle of continuity of boundaries established by treaties (p. 189). In my opinion it is the recognition of that fact which found its reflection in the practice of the African states.

The author is right in emphasizing that the concept of unequal treaties cannot apply to boundary treaties (p. 197—198) and that only post-succession territorial disputes, whereby one party reject the boundary provisions contained in the treaty are contrary to the principle of continuity of boundaries established by treaties (p. 199). On the other hand, the principle of continuity is not impaired by boundary disputes (for a definition of a boundary and territorial disputes see p. 196), by territorial disputes arising out of other reasons and by inherited disputes.

In the final Chapter of his book the author has presented the most important precedences from the practice of states. It results from these materials as well as from the comments of the International Law Commission to Article 11 of the draft Convention that the only states rejecting the principle of post-succession continuity of boundaries established by treaties are Afghanistan and Somalia.

Among the merits of the reviewed book one must also mention the discipline of style and the cogency of argument. Dr. Jerzy Tyranowski has offered us a book whose reading will give great satisfaction to any reader who intends to broaden and update his knowledge of the subject.

by Renata Szafarz

ANDRZEJ WASILKOWSKI (ed), *Prawo międzynarodowe a prawo wewnętrzne w świetle doświadczeń państw socjalistycznych* [International Law and Municipal Law in the Light of the Experience of the Socialist States]. Documents of the scientific conference held in Warsaw in October 1977, Wrocław 1980, Ossolineum, 156 pp.

The problem of relationship between international and internal law has for many years been the subject of great interest of legal doctrine. Its importance has been increasing together with the changes taking place in the nature and functions of international Law. These changes have been caused, in the first place by ever wider scope of international regulation, which had long ago exceeded the boundaries of inter-state relations. International law has been to a ever greater extent becoming an instrument regulating internal relations, which have hitherto been the subject of exclusive competence of states. This process began in the 19th century, but gained momentum in the past 20 years. Among other things, this is the result of the development of integration which blurred the boundaries between the national and the international law. It is within the integration groupings that the problem of the place and role of international norms in the internal legal system acquires its real significance.

It was the Institute of State and Law of the Polish Academy of Sciences which took the initiative and organized a scientific conference with the aim of examining the place and role of international law in the internal legal system of states in the context of the integration process embracing the member-states of the Council for Mutual Economic Assistance. The conference was held in Warsaw in October 1977. The papers which provided the basis for discussion were presented by eminent experts in the field from all socialist countries. They included: N. Androne (Romania), O. Capatina (Romania), H. de Fiumel (Poland),

A. Kanada (Czechoslovakia), H. J. Müller (GDR), P. Radoynov (Bulgaria), L. Rüster (GDR), K. Skubiszewski (Poland), E. Ušenko (USSR), A. Wagner (Czechoslovakia), and A. Wasilkowski (Poland). These papers are the subject of the present review.

Among the papers presented at the conference two groups of topics stand out. The first deal with general problems of theory and practice in the field of relations between international and national law. The second are devoted to the analysis of the place and role of the legal acts of the CMEA in the internal law of the socialist states. In the first group, the paper by K. Skubiszewski *International Law in the Legal Order of a State* deserves special attention. The author starts with the presentation of the two basic theories of monism and dualism. He considers that the difficulties arising from the comparison of these two theories are not resulting from their "veracity" or "falseness", but from their different function and different relation to legal reality (p. 21). He then proceeds to examine the methods of incorporating international norms into internal law. He uses the occasion to introduce some terminological order, drawing particular attention to the concept of reception, transformation, ratification and validity of an international treaty on its own force. In conclusion, K. Skubiszewski states that while in the sphere of international law its precedence over national law is a binding rule, in the sphere of internal law this precedence is often still only a postulate, supported, however, by arguments of "logic and legality" (p. 52).

The reading of subsequent papers leads to the conclusion that terminological problems are one of those which make it more difficult for scholars to reach agreement. This applies, in particular, to the concept of transformation which various scholars interpret in a quite different manner. For some it is a form of reception (K. Skubiszewski), others (H. J. Müller, p. 94) treat reception and transformation as identical concepts while others (E. Ušenko, p. 56) cover by the concept of reception various forms of introduction of international norms into the system of internal law.

Generally speaking, all authors of the papers presented at the Warsaw conference reject both the monistic and dualistic theories in their extreme forms. They seem to be in favour of the so-called "moderate" or "realistic dualism". While recognizing the autonomy of the two legal orders they stress the close links between them. A difference of opinion can be noticed with respect to the possibility of conflict arising between these systems. For example, E. Ušenko considers that a direct conflict is impossible. He emphasizes however, that opinions on this matter among Soviet scholars vary (p. 60). The authors which do not rule out such a possibility agree that international law does not prejudice the question as to how such a conflict is to be settled, leaving the matter to be dealt with by internal law. At the same time they reject the conception of automatic precedence of international law.

The analysis of the legislation of the socialist states carried out by the authors of the papers presented in Warsaw reveals that they do not contain general rules aiming at the settlement of conflicts between a national and international norm. At best, the precedence of the international norm derives sometimes from partic-

ular laws, which stipulate that the international norm be applied first. That is why they all emphasize the considerable role of practice. The analysis of actual practice leads them to conclude that a conflict between a national and international norm is being settled in the socialist states in accordance with the general legal principle that *lex specialis derogat legi generali*, *lex posterior derogat priori*, etc.

The authors of the papers presented in Warsaw draw particular attention to the manner in which international norms are being introduced into the internal legal system. On this matter opinions vary, and this can, at least in part, be explained by the above mentioned terminological difficulties. They agree, however, that the problem is dealt with by each state autonomously. Generally speaking, they emphasize the necessity of transformation (in the broad meaning of the term — see E. Ušenko, p. 26, H. J. Müller, p. 88, P. Radoynov, p. 81 and A. Kanda, p. 113). Opposing views, in particular those claiming that international norms are binding on their own, are rejected by some as a reflection of the monistic theory leading to the violation of the principle of state sovereignty (P. Radoynov, p. 81). The possibility that international norms can be binding *ex proprio vigore* is sometimes accepted, but only as regards technical norms (P. Radoynov, p. 82), self-executing treaties (N. Androne, p. 107) or treaties concluded by socialist states and containing uniform norms (H. J. Müller, p. 90).

This opinion was vigorously opposed by H. de Fiumel. In his paper which summed up the experience of the socialist states in this field, he stated that no reasons of principle exist which would exclude the possibility of international norms being directly binding in the national legal

system of the socialist states. Especially he saw no encroachment on state sovereignty by the application of international norms *ex proprio vigore* (pp. 127—128).

The thesis that the acts of the CMEA could be directly binding on the member-states of the Organization is rejected by the overwhelming majority of scholars. They consider that such acts enter into the internal legal system in the same way as treaty norms. They refer to the principle of state sovereignty as necessitating the transformation of the acts of the CMEA (E. Ušenko, p. 64, P. Radoynov, p. 141 and L. Rüster, p. 148). L. Rüster, who analysed the practice of the CMEA member-states, points out however that the transformation procedure applying to the CMEA acts is less complicated and more expeditive. This, in his opinion, does not constitute a violation of the sovereignty of the member-states of the CMEA (p. 154).

H. de Fiumel, analysing in his paper place of the decisions of the CMEA in the respective national legal systems agrees with the opinion of J. Sandorski¹, that the recommendations of the Council accepted by the states are binding *ex proprio vigore*. Consequently they must be respected by the state organs and economic organizations (p. 132). H. de Fiumel considers that this is the result of the special nature of the relations between the socialist states. The fact that the recommendations of the CMEA are directly binding illustrates, in his view, the general thesis concerning the acceptability of the direct binding force of an international norm in internal law.

The problem of unified law in the socialist economic integration is dealt

¹ J. SANDORSKI, RWPG. *Forma prawnej integracji gospodarczej państw socjalistycznych* [The CMEA. A Legal Form of Economic Integration of the Socialist States], Poznań 1977, p. 128.

with by A. Wagner. He stresses the role of unified norms, while drawing at the same time the attention to the difficulties connected with the differing interpretation in various countries. This is the result of the absence of guarantee of uniform interpretation and of the application of unified law. In this connection he rises the problem of arbitration procedure and calls for the establishment of an international arbitration court of the CMEA (p. 159).

O. Capatina deals in his paper with the Convention on the settlement by way of arbitration of civil law disputes arising from the relations of economic, scientific and technical co-operation signed in Moscow May 26, 1972 and discusses the legal rules applied by the Arbitration Commission set up by the Chamber of Industry and Commerce of the Romanian Socialist Republic.

The paper by A. Wasilkowski deals with directions of further studies on the place of international norms in the national legal systems. He draws the attention to the changing place in the international treaty relations and involving a continuous increase in the number of treaties which do not require ratification. Such treaties are, as a rule, ignored when discussing the foundations of the entry into force of international norms in internal law. Referring to the discussion on the necessity of transformation A. Wasilkowski points out that the weakness of transformation resides in the fact that it cuts off the international norm from the legal system which presided over its birth and transfers that norm to the internal law. In certain circumstances the process can lead to a modification of the contents of the norm. On the other hand, the direct application of international law can prevent the occurrence of such a danger.

The twelve papers presented at the

Warsaw Conference offer a full review of the doctrine and practice of the socialist states concerning the relationship between international and national law. All the more so, that the authors are presenting not only their own views but reflect the opinions of the entire scientific community in their respective countries. In particular, of great value is the analysis of the actual practice of states which is not readily available to the foreign scholar. The analysis of the actual practice in conjunction with the review of theoretical thinking on the matter makes it possible to draw some conclusions as to the degree of uniformity of the positions of the various socialist states as regards the problem of the place and role of international norms in the national legal systems. Attention must

be drawn, in particular, to the discussion of the problem of the ways by which legal rules adopted by the CMEA are incorporated in the internal legal systems of the member-states. With the developing processes of socialist integration this problem gains increasingly in importance.

It may be emphasized that the reviewed book represents the first monograph published in the socialist countries discussing in such a broad and comprehensive way the problem of relationship between international and national law. It offers the reader a wealth of comparative material and is therefore an invaluable source of information to any student of the problem.

by Witold Daniłowicz

KRYSTYNA WIEWIÓROWSKA, *Bezpośrednia telewizja satelitarna. Studium prawnomiędzynarodowe* [Direct Broadcast Satellites. Study on International Legal Problems], Warszawa—Łódź 1981, Państwowe Wydawnictwo Naukowe, pp. 127.

The monograph represents the main part of a doctoral thesis under the same title presented successfully by Ms Krystyna Wiewiórowska at the Polish Institute of International Affairs in 1979. Editorial considerations compelled the authoress to present in a very concise manner the complex problems of a political and legal nature involved in direct broadcast satellites (DBS). This assumed a somewhat optimistic conviction that the reader is already acquainted to a large degree with the problems under consideration. As a result, this is a difficult book addressed to a rather restricted readership of specialists in the field of international law and international relations.

The book contains an introduction, five chapters, conclusion, bibliography and a rather extensive summary in

Russian and English. It seems to me that the structure of this monograph does not make for easy reading. The contents of the chapters exceed the scope signalled by their title. The authoress must, however, be given the credit for ending each chapter with the conclusions which are to be drawn from the considerations contained therein.

Chapter I deals with the links between the satellite technology and international flow of information. The authoress is not concerned only with the question of DBS, but studies also some problems of the remote sensing of the Earth from outer space and the transfer of computer data by satellites. Thus, she tries to cover subjects only indirectly connected with her main theme. This makes interesting reading

but adds hardly to the clarity of considerations.

In Chapter II Ms Krystyna Wiewiórowska has discussed the history of the negotiations on the principles of DBS. These negotiations took place in the United Nations, in particular within the framework of the special Working Group of the General Assembly and the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee. All this led to the preparation of a draft resolution for the General Assembly of the United Nations in 1977 containing a preamble and 12 principles of DBS. Three of these principles require further discussion. At present there are real prospects of achieving agreement on the final text of the resolution. It can therefore be said that the book by Ms Krystyna Wiewiórowska was published too soon. Some of its sections will shortly have the value of an account of historical events. This should not be interpreted as an important reproach. Only in the second half of the 1980s television programmes will be received by standard individual television sets directly from satellites without the mediation of earth transmission stations. And at that time States will protect their sovereign rights against the encroachments which may result from this kind of international flow of information. However, the problem must be solved now, in order to avoid future conflicts. The representatives of science of international law have a real contribution to make in this respect. And it is from that point of view that the book by Ms Krystyna Wiewiórowska must be considered.

Chapter III dealing with the legal regulation of the contents of direct satellites broadcasting programmes deserves special attention. For these are problems of fundamental importance, which are still the subject of great controversy. The authoress quite

rightly stresses that advertising programmes as well as programmes for children and teenagers require special regulation. It is only to be regretted that she failed to submit the matter to closer examination. For example, she ignored Polish studies concerning advertising. On the other hand she gave much more attention to television programmes whose diffusion is prohibited. The analysis of all these controversial questions can hardly be considered as exhaustive. In spite of an explicit assurance given on page 32, Ms Krystyna Wiewiórowska fails to take an unequivocal stand on the issue of free flow of information. In her book this spiny issue is, generally, linked to the problem of propaganda. In particular, the authoress must be blamed for evading the issues raised by the provisions of Article 19 of the International Covenant on Civil and Political Rights ratified by Poland in 1977. It has to be recalled that Article 19 establishes the right of each individual to free expression of opinions, comprising freedom of searching, receiving and dissimulation of all information and opinions without regard to state borders. The exercise of these rights is restricted only by the law.

Of equal importance is Chapter IV dealing with the legal regulation of DBS to third States. Ms Krystyna Wiewiórowska points out that in international law there is no prohibition to broadcast television programmes, or radio programmes for that matter, into the territories of other states. On this question, the majority of states is in favour of prior consent of the state concerned. One can share the authoress's conviction that a compromise formula calling for prior "consultation and agreements between states" will prove acceptable to other states, including the USA. It seems that more difficult to solve will be the problems arising from the practical

implementation of the special provisions dealing with DBS programmes which, for technical reasons, can reach viewers outside the territory at which they are directed (so-called "spill over").

Chapter V covers the very complex problem of responsibility for damages caused by DBS. Ms Krystyna Wiewiórowska concludes quite rightly that the principle of state responsibility for this kind of activity results from the Outer Space Treaty of 1967. She thinks that this will be confirmed in the resolution concerning DBS. But in this question there is no ground to refer, as does the authoress on p. 90—91, to Article 22 of the Telecommunication Convention. The quoted Article cannot be found in the text of the Convention in force, which was adopted in Malaga-Torremolinos in 1973. Also some other assertions contained in Chapter V are debatable, for example the premisses of responsibility for wrongful acts of states.

In her final conclusions Ms Krystyna Wiewiórowska expresses the

opinion that at present it is, at the best, possible to speak about the shaping of a special branch of international law regulating the international flow of information through the mass media. However, the question arises whether and to what extent the adoption of the principles of DBS can contribute to the separation of this new branch. Unfortunately no answer is to be found to this question in the reviewed book.

My critical remarks do not affect my general positive appreciation of the book by Ms Krystyna Wiewiórowska. This is an interesting contribution to the studies of outer space law. It may be added that the value of the monograph has been enhanced by the fact, that Ms Krystyna Wiewiórowska took advantage of her experience as a member of the Polish delegation to the sessions of the UN Committee on the Peaceful Uses of Outer Space.

by Jerzy Gospodarek

Karol WOLFKE, *Międzynarodowe prawo środowiska. Tworzenie i egzekwowanie* [*International Environmental Law. Creation and Enforcement*], Wrocław 1979, Ossolineum, pp. 178.

For many years the problems of environmental protection has been the subject of lively interest and many researchers, including international lawyers. And while states has not been very eager to accept legally binding obligations concerning the protection of the environment, with the sole exception of obligations concerning the sea waters and inland waters, it is gratifying that scientific reflection was accompanying the development of international environmental law since its very inception. Among the numerous works dealing with the legal problems of environmental protection and, as a

rule, with only some specific aspects or fields of international environmental law, the book by Prof. Karol Wolfke stands out by the comprehensive treatment of the subject and by the depth of its theoretical grasp. It is the result of many years of research carried out, among other places, in the Woodrow Wilson International Centre for Scholars, where Prof. Wolfke spent a year.

The author gives a very broad meaning to the concept of international environmental law. He defines it as "all rules of international law and all institutions created by it, which

directly or indirectly serve the protection and shaping of the environment" (p. 8). The protection of the human environment involves comprehensive action in many fields. Scientific research reveals the ever growing interdependence of various phenomena and the complexity of the elementary human needs. As a result, the concept of the environment which is to be protected is constantly broadening. It includes not only the atmosphere, the waters and the soil, but also the habitat and the cultural environment. The author concludes therefore that "there is no exaggeration nowadays in the fact, that by human environment one understands simply the ensemble of conditions indispensable to ensure normal life to the individual and to society" (p. 6).

The first signs of the development of international environmental law can be seen in the various international conventions concluded for almost a century in order to protect certain plants and animals, to fight against natural pests, to protect waters against pollution, etc. Considerable momentum was added to the development of international environmental law by the UN Conference on the Human Environment held in Stockholm in 1972. From that time we are dealing with international environmental law as a new branch of international law, with the term "international environmental law" gaining acceptance in both theory and practice.

The main task which Prof. Wolfke sets to himself in his book was to examine the usefulness of the means and instruments serving the development of the legal system dealing with the protection of the environment as well as to study what can be undertaken in order to improve the effectiveness of that system. The author studied thoroughly all the various kinds of international agree-

ments, the decisions taken by inter-governmental agencies, all the other sources and auxiliary means of creating rules of international law and all other extra-legal factors, from the point of view of their usefulness for the development of international environmental law. This led him to make many observations and to draw many very interesting conclusions on the laws regulating the process of creation and development of contemporary international law as well as to advance many opinions of considerable practical value.

Analysing the sources of international law, the author focuses his attention on international treaties and decisions by international organizations. Prof. Wolfke, who in his previous writings used all his talents to emphasize the role of the custom in the system of international law, also in our times, appears in his latest book in favour of the thesis that customary law constitutes an instrument of social engineering of only limited scope. He argues, quite convincingly, that the international custom is not "a mechanism for the creation of detailed technical provisions, so essential in environmental law, because of its obvious shortcomings, such as lack of precision and great difficulty in ascertaining the actual content of the custom". He adds, however, that "it would be a great mistake to underestimate the importance of that mechanism also in this sphere" (p. 89). Discussing the utility of international treaties, Prof. Wolfke points out that in the field of environmental protection agreements between special governmental organs, agreements concluded by organs of local government and agreements concluded by special plenipotentiaries are already playing an important role and will, no doubt, play an increasing role in the future. Mention must also be made, among

agreements *sui generis*, of international agreements concluded in execution of the agreements signed by research institutions, for these agreements represent an important link in the bilateral cooperation aimed at environmental protection. Analysing the bilateral agreements concluded by neighbouring states, the author points out that together with many positive elements, such as the less difficult and, hence, greater expedience in reaching agreement on joint aims and measures to be applied, they reveal also many negative ones, such as the ease with which both parties renounce to live up to their mutually accepted obligations and the weakness of the control machinery. This led the author to the rather far reaching and therefore controversial conclusion that bilateral agreements "cannot constitute an autonomous guarantee of protection even of a small section of the natural environment; one the other hand, they can constitute and constitute an important link in the global action ensuring effective control of the execution of the obligations accepted by the parties to protect the natural environment as a whole" (p. 26).

Of great interest are the opinions of the author on the law-creating value of resolutions concerning the environment adopted by international organizations and, in particular, on the role of the "soft law of the environment" which takes most frequently the form of "recommendations" or "declarations of principles". The problem of the function performed by that kind of "soft law" is growing in importance and gives rise to scientific controversy; this is due to both the growing number of such rules and to the tendency to accept a broader interpretation of the law-creating value of recommendations and declarations, these tendencies being often an expression of impatience caused by the slow pace of the entry

into force of legally binding rules. Discussing all the various views on that controversial subject, the author is reluctant to commit himself in favour of the thesis that such norms may be considered as legally binding, arguing that the observed practice, especially of the UN General Assembly, to pile up recommendations of all kinds can prove harmful to the development of international law as a whole, and, hence, to the development of international environmental law. The relative ease with which resolutions are being adopted by majority votes leads to the proliferation of "soft law", i.e. to the creation of pseudo-norms, which enrich international law in a quantitative sense, but at the same time impair the authority of international law in the eyes of world public opinion. Consequently, he thinks that the recommendations of international organizations "should not be treated as autonomous instruments of creation of the law of environmental protection, but only as one of the important factors participating in the complicated law-creating process" (p. 80).

Prof. Wolfke puts forward two questions of great theoretical and practical importance, namely, whether the obligation to protect the environment and, especially, the prohibition to destroy the environment, constitutes *ius cogens* in the meaning of Article 53 of the Vienna Convention, as a result of which treaties in contradiction with such a prohibition would be null and void, and whether the use of force can be contemplated in the case of a serious threat to the environment.

As far as the first question is concerned, Prof. Wolfke considers that it would be premature to include the obligation to protect the natural environment into the rules of *ius cogens*; therefore, it does not seem possible to accept the possibility of a

treaty being terminated or suspended because it interferes with the protection of the environment. On the second question the author expresses the view that the definition of aggression adopted by the UN General Assembly is broad and flexible enough, so as to cover also "ecological aggression". Taking into consideration the Convention prohibiting the use of techniques leading to changes in the natural environment for military and other purposes, and taking also into consideration the broad authority of the Security Council to take appropriate action in the circumstances, it can be stated that the violation of the environment can, in some cases, justify the application of armed force against a state.

In the present review it is not possible to deal with other questions dealt with by Prof. Wolfke in his book. What is worth stressing is the fact that his analysis is not limited to the problems of international environmental law; he has much to say about some fundamental problems of contemporary international law in general, illustrated by the problems of the development and efficacy of the legal rules concerning the protection of the environment. Such an approach was intended. Prof. Wolfke states that his aim was not a full presentation of the process of creation of international environmental law, but rather an illustration by way of examples drawn from various treaties of what can be done to enhance the protection of the environment by legal means.

In his conclusive remarks Prof. Wolfke states that "there are already sufficiently flexible and useful instruments for the creation of international law of the environment and for ensuring its efficiency, especially in the form of international treaties and joint inter-state organs: the problem therefore is not in the proliferation of

new instruments and machinery, but in inducing states to accept and to make use of these instruments; this will depend on the existence of a sufficiently strong feeling of common purpose and common interest in the creation of and compliance with international environmental law" (p. 160).

The same conclusion applies to the development and advancement of many other branches of international law. I believe, however, that the characteristic features of the process of creation of rules of international law dealing with the protection of the environment are, on the one hand, the eagerness of governments to pay lip service to the idea of environmental protection and to support general recommendations without binding force and, on the other hand, the overwhelming influence of the economic factor which is responsible for the long and much overdue process leading to the creation of universally recognized and effective legal rules. The fate of the Convention on the pollution of sea waters is a good example illustrating that point. With relative ease and rather quickly it was possible to work out appropriate norms under the pressure of world public opinion impressed by the disaster of the tanker *Torrey Canyon* (the Brussels Convention of 1969 and the London Convention of 1973). However, the ratification and practical application of these Conventions is progressing at a snail's pace, not because of the lack of good will but because of the costs involved in the modernization of ships and ports. Everybody knows that the technical possibilities for a radical reduction of pollution caused by industrial plants are at hand, but their application would increase the cost of industrial production sometimes by more than ten per cent. This, in turn, would have led to either a reduction in the level of consumption, or to a decrease in

the rate of economic growth with all its social consequences. It is of course impossible to negate the growing importance of the problem of environmental protection, but it is equally necessary to take into consideration the priorities accepted at present by public opinion and governments. It seems to me that, considering all this, the rather negative assessment of the "soft law" by Prof. Wolfke is too

rigorous, since it performs, to a certain extent, an educating function; thanks to the "soft law" public opinion and governments step by step get used to a different hierarchy of values, and the international community is being intergrated in the protection of a common good.

by Remigiusz Bierzanek

OBITUARIES * NOTES NÉCROLOGIQUES

POLISH YEARBOOK
OF INTERNATIONAL LAW
VOL. XI, 1981—1982
PL ISSN 0554-498X

Jerzy Jakubowski (1930 - 1982)

Le Professeur Jakubowski n'est plus parmi nous. Décédé subitement à Varsovie le 18 avril 1982, ce grand savant et arbitre fut l'un des plus éminents spécialistes de la science polonaise du droit international privé. Né le 2 juin 1930 à Brodów (dans la région de Ciechanów, au nord de Varsovie), le Professeur Jakubowski fit ses études juridiques à la Faculté de Droit de l'Université Copernic à Toruń et à la Faculté de Commerce extérieur à l'Ecole centrale de planification et de statistique à Varsovie, obtenant en 1955 la licence en droit. Dans sa thèse de doctorat, défendue avec succès en 1960, il aborda le problème de «La notion de territorialité dans la science du droit international privé».

Toute la carrière scientifique du Professeur Jakubowski fut étroitement liée et influencée par la pratique de la vie économique. Parallèlement à ses travaux de recherche et d'enseignement, il fit, dans la deuxième moitié des années cinquante, ses premiers pas en tant que conseiller juridique auprès de la Chambre polonaise du commerce extérieur à Varsovie. Jurisconsulte du ministère polonais du Commerce extérieur, de 1967 à 1972, il n'hésitait jamais, jusqu'à ses derniers jours, de mettre au service des autres ses connaissances profondes et son expérience lorsqu'on s'adressait à lui en raison de l'importance et de la complexité d'un problème.

Les liens étroits avec la pratique ne sont pas restés sans influence sur ses travaux scientifiques. Ses analyses détaillées de problèmes du commerce international aboutirent à une excellente monographie *Umowa sprzedaży w handlu międzynarodowym. Metody i formy regulacji* (Le contrat de vente dans le commerce international. Méthodes et formes de réglementation) qui fut le sujet de sa thèse d'agrégation. Grâce à cette importante étude et à de nombreux articles dans ce domaine, le Professeur Jakubowski se fit connaître comme un grand spécialiste de problèmes juridiques du commerce international. Les années suivantes n'ont qu'affermi sa position en la matière, en Pologne et en dehors de

ses frontières. Il fut notamment membre (depuis 1979) du conseil scientifique et du comité exécutif de l'Institut international du droit et de la pratique du commerce international. Il participa activement à la préparation de la convention sur les contrats de vente internationale de marchandises, élaborée dans le cadre de la Commission des Nations Unies pour le droit commercial international et adoptée au cours de la conférence de Vienne en 1980.

Mais les contacts les plus intenses du Professeur Jakubowski avec la pratique se manifestèrent dans le domaine de l'arbitrage commercial international. Auteur de nombreux articles et études, il fut d'abord membre et depuis 1973 président de la Cour d'arbitrage près la Chambre polonaise du commerce extérieur. Cette activité du Professeur Jakubowski a sensiblement contribué au prestige dont jouit la Cour dans les milieux scientifiques et d'affaires à l'Ouest et à l'Est. On doit également mentionner sa participation active aux travaux, menés dans le cadre de l'UNCITRAL, sur le Règlement d'arbitrage adopté au cours de la session de l'Assemblée générale de l'ONU en 1976. Ses activités en matière d'arbitrage lui valurent une autorité internationale. Depuis 1972, il fut membre du International Council for Commercial Arbitration et, depuis 1980, membre de la Cour permanente d'arbitrage de La Haye.

Le Professeur Jakubowski fut également intéressé par le processus d'intégration économique, surtout dans le cadre du Conseil d'Assistance Economique Mutuelle. Il consacra de nombreux articles et études aux problèmes juridiques du commerce au sein du CAEM et notamment aux conditions générales de livraisons, à la responsabilité pour les obligations économiques, à l'organisation et à la procédure d'arbitrage commercial, au rapprochement et à l'unification du droit. Ses travaux sur la formation et l'application du droit communautaire du CAEM restent une importante contribution à la doctrine et à la pratique. Ses occupations dans ce domaine laissèrent de traces profondes dans sa production scientifique et on retiendra surtout sa monographie, parue en 1980, consacrée aux problèmes juridiques des organisations économiques internationales des pays du CAEM (*Międzynarodowe organizacje gospodarcze krajów RWPG. Zagadnienia prawne* [Organisations internationales économiques des pays du CAEM. Problèmes juridiques]).

Pour ce qui est du droit unifié et du droit communautaire du CAEM, on doit souligner que l'intérêt accordé par le Professeur Jakubowski à ces questions résultait non seulement de leur importance pour les échanges internationaux (dont surtout les groupements d'intégration), mais avant tout de l'attitude doctrinale du Professeur. Selon la conception qu'il défendait constamment pendant plusieurs années dans ses études et articles, le droit international privé ne devait pas se limiter

aux problèmes de collision de règles juridiques, mais également accomplir des fonctions plus larges et régler d'une manière active les problèmes de fond des situations internationales. Sa plus importante étude en la matière fut publiée en 1972 — *Prawo jednolite w międzynarodowym obrocie gospodarczym. Problemy stosowania* [Le droit uniforme dans les échanges économiques internationaux. Problèmes d'application].

L'intérêt du Professeur Jakubowski pour le processus d'intégration économique trouva également son expression dans ses recherches relatives aux tendances de développement du droit des sociétés au sein des Communautés européennes. Sa participation aux travaux de la Commission des Nations Unies pour le droit commercial international fut notamment liée à l'étude de cette question.

On ne peut pas résumer en quelques lignes la richesse de l'oeuvre scientifique du Professeur Jakubowski. Il semble toutefois indispensable de mentionner son intérêt constant pour les problèmes de coopération économique entre l'Est et l'Ouest. Sans citer ses nombreux rapports aux conférences internationales, il convient de rappeler la confirmation de son autorité par l'Académie de droit international où il donna le cours sur *Some Legal Aspects of Industrial Cooperation in East-West Relations* (paru dans le *Recueil des cours* de 1980).

Lié depuis plusieurs années à la Faculté de Droit de l'Université de Varsovie, il fut, de 1968 à 1974, directeur adjoint de l'Institut de droit civil pour devenir ensuite (en 1975) fondateur et premier directeur de l'Institut de droit international à cette Faculté.

Ses tâches d'enseignant, il les accomplissait avec passion et ardeur. Les séminaires qu'il dirigeait furent très connus et fréquentés. Grâce à sa vivacité, son sens de camaraderie et à ses talents de chercheur et d'enseignant, il sut créer autour de lui un milieu de collaborateurs et développer une coopération scientifique internationale dans le domaine du droit économique.

Cette mort, subite et inattendue, constitue une perte douloureuse pour la science polonaise du droit. La diversité des occupations du Professeur Jakubowski, son profond engagement dans la recherche scientifique, ses larges horizons et ses nombreux talents contribuèrent à une vie très intense. Cinquante ans à peine révolus, cette vie s'acheva brusquement. Et pourtant les réalisations du Professeur Jakubowski pourraient être celles de deux ou trois hommes ayant atteint le troisième âge. Sa disparition crée un vide difficile à combler.

Andrzej Catus
Andrzej Wasilkowski

**Principaux traités internationaux entrés en vigueur à l'égard de
la Pologne en 1979 - 1980**

La liste que nous publions comprend les principaux traités internationaux, bilatéraux et multilatéraux, entrés en vigueur à l'égard de la Pologne en 1979 - 1980. Les arrangements administratifs (accords conclus entre les ministères de deux Etats) sont absents de ce registre qui ne contient que les traités conclus par le Conseil d'Etat ou par le Gouvernement polonais. Les protocoles (p.ex. protocoles annuels entrant dans le cadre d'un accord à long terme), les plans et les programmes d'exécution, joints aux traités en question, ne figurent non plus sur notre liste.

Les traités bilatéraux figurent sur cette liste par pays, dans l'ordre alphabétique (alphabet français) selon le schéma suivant: titre du traité, lieu et date de sa signature, mode d'expression du consentement à être lié, date de l'entrée en vigueur à l'égard de la Pologne.

Les traités multilatéraux observent le même schéma.

Traités bilatéraux*République Démocratique Allemande*

— Accord sur la coopération en matière d'amélioration du service technique et de l'approvisionnement en pièces de rechange aux machines, installations et appareillages fournis dans le cadre des échanges commerciaux mutuels, Varsovie, le 25 avril 1979; signature; le 25 avril 1979.

République Fédérale d'Allemagne

— Accord sur la simplification des demandes concernant l'emploi des travailleurs, Varsovie, le 23 août 1979; échange de notes; le 23 août 1979.

Argentine

— Accord sur la coopération scientifique et technique, Varsovie, le 9 mai 1974; approbation; le 12 octobre 1979.

Autriche

— Accord relatif à l'extension de la coopération économique, industrielle et technique entre les petites et moyennes entreprises, Vienne, le 20 février 1980; signature; le 20 avril 1980.

— Protocole relatif à l'approfondissement de la coopération industrielle entre les entreprises polonaises et autrichiennes sur les marchés des pays tiers, Vienne, le 20 février 1980; signature; le 20 avril 1980.

— Accord sur l'assistance juridique dans le domaine du droit pénal, Vienne, le 27 février 1978; ratification; le 1^{er} mai 1980.

— Accord sur l'extradition, Vienne, le 27 février 1978; ratification; le 1^{er} mai 1980.

Belgique

— Accord relatif à l'élargissement de la coopération économique, industrielle et technique entre les petites et moyennes entreprises, Bruxelles, le 26 septembre 1979; signature; le 26 septembre 1979.

Brésil

— Accord sur la coopération dans le domaine des mines de charbon, Varsovie, le 18 avril 1980; signature; le 18 avril 1980.

Bulgarie

— Accord sur la coopération culturelle et scientifique, Sofia, le 1^{er} février 1979; ratification; le 6 septembre 1979.

Canada

— Long Term Grain Agreement, Warsaw, 4 October 1979; signature; 4 October 1979.

République Populaire de Chine

— Accord sur les échanges commerciaux et les paiements en 1980, le 25 mars 1980; entré en vigueur avec effet rétroactif le 1^{er} janvier 1980.

République Démocratique Populaire de Corée.

— Accord sur les transports aériens, Pyongyang, le 28 août 1978; approbation; le 27 janvier 1979.

— Accord sur les fournitures réciproques de marchandises et les paiements pour les années 1981-1985, Varsovie, le 21 décembre 1980; signature; le 21 décembre 1980.

Cuba

— Accord sur l'abolition réciproque des visas, Varsovie, le 27 janvier 1979; approbation; le 12 juin 1979.

— Accord sur le crédit accordé à Cuba pour la fourniture de machines, d'installations et de services techniques, Varsovie, le 10 février 1979; approbation; le 15 décembre 1979.

Egypte

— Agreement on Maritime Transport, Warsaw, 2 Novembre 1977; approval; 7 September 1979.

Ethiopie

— Credit Agreement, Warsaw, 12 December 1978; approval; 3 July 1979.

Finlande

— Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital, Helsinki, 26 October 1977; ratification; 30 March 1979.

France

— Accord de pêche franco-polonais dans la zone économique des îles Kerguelen, Paris, le 1^{er} septembre 1979; échange de notes; le 1^{er} septembre 1979.

— Accord de coopération dans le domaine de l'éducation physique et du sport, Varsovie, le 26 octobre 1979; signature; le 26 octobre 1979.

— Accord de coopération dans le domaine du tourisme, Varsovie, le 26 octobre 1979; approbation; le 22 mars 1980.

— Accord quinquennal sur la coopération économique, Paris, le 21 novembre 1980; signature; le 21 novembre 1980.

— Programme à long terme de développement de la coopération économique,

industrielle, scientifique, et technique, Paris, le 21 novembre 1980; signature; le 21 novembre 1980.

Grande-Bretagne

— Convention on Co-operation in the Field of Culture, Education and Science, London, 7 November 1978; ratification; 10 August 1979.

Grèce

— Accord relatif aux transports routiers internationaux, Varsovie, le 30 août 1977; ratification; le 17 janvier 1979.

— Convention consulaire, Varsovie, le 30 août 1977; ratification; le 29 avril 1979.

— Agreement on Mutual Co-operation and Assistance in Customs Matters, Athens, 14 November 1978; approval; 17 September 1979.

Hongrie

— Accord sur la coopération économique et technique dans le domaine du développement de l'industrie charbonnière hongroise, Katowice, le 2 décembre 1979; signature; le 2 décembre 1979.

— Accord sur la reconnaissance réciproque de l'équivalence des certificats d'enseignement et des grades scientifiques délivrés en Pologne et en Hongrie, Varsovie, le 25 avril 1980; ratification; le 1^{er} octobre 1989.

Inde

— Agreement on Co-operation in the Field of Health, Warsaw, 16 June 1979; signature; 16 June 1979.

Japon

— Treaty on Commerce and Navigation, Tokyo, 16 November 1978; ratification; 26 October 1980.

Jordanie

— Agreement on International Road Transport, Warsaw, 30 October 1978; approval; 27 March 1979.

Koweït

— Air Transport Agreement, Koweït, 31 May 1977; approval; 16 August 1979.

Laos

— Accord concernant les échanges commerciaux et les paiements pour l'année 1980, Vientiane, le 3 novembre 1979; signature; le 3 novembre 1979.

Maroc

— Accord sur le développement de la coopération économique, scientifique et technique, Varsovie, le 30 octobre 1976; approbation; le 20 avril 1979.

Mexique

— Accord sur la coopération économique et industrielle, Mexico, le 20 octobre 1979; approbation; appliqué provisoirement dès la date de la signature.

Norvège

— Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, Oslo, 24 May 1977; ratification; 30 October 1979.

Panama

— Accord sur la coopération culturelle et scientifique, Panama, le 17 février 1978; ratification; le 15 février 1979.

Pays-Bas

— Accord sur l'élargissement de la coopération économique, Varsovie, le 26 novembre 1976; approbation; le 1^{er} août 1979.

— Convention on Co-operation in the Veterinary Field, Warsaw, 31 May 1978; approval; 20 September 1979.

— Phytosanitary Agreement, Warsaw, 31 May 1978; approval; 1 November 1979.

Pérou

— Accord sur la coopération culturelle et scientifique, Lima, le 4 novembre 1977; ratification; le 8 août 1979.

San Marino

— Accord sur l'établissement des relations officielles, San Marino, le 3 décembre 1979; signature; le 3 décembre 1979.

Singapore

— Agreement for Air Services Between and Beyond Their Respective Territories, Singapore, 22 December 1979; approval; provisional application as of 22 December 1979.

Soudan

— Agreement for Air Services Between and Beyond Their Respective Territories, Warsaw, 11 July 1980; approval; provisional application as of 11 July 1980.

Syrie

— Accord relatif aux transports routiers internationaux, Varsovie, le 15 avril 1978; approbation; le 14 avril 1979.

Tchécoslovaquie

— Accord sur le crédit accordé par la Pologne à la Tchécoslovaquie en vue d'assurer le transport de l'énergie électrique de la Pologne en Autriche à travers le territoire de la Tchécoslovaquie, Prague, le 11 mai 1977; approbation; le 13 août 1979.

Turquie

— Agreement Regarding the Implementation of the Industrial Projects, Ankara, 31 January 1980; approval; 8 April 1980.

— Agreement on the Development of Economic and Technical Co-operation, Ankara, 31 January 1980; approval; 18 July 1980.

Union des Républiques Socialistes Soviétiques

— Accord sur la coopération dans la construction d'une centrale atomique à Chmielniki sur le territoire de l'URSS et les fournitures d'énergie électrique à la Pologne, Moscou, le 29 mars 1979; signature; le 29 mars 1979.

— Accord sur les relations mutuelles dans le domaine de la pêche sur la Baltique; Moscou, le 11 mai 1978; approbation; le 30 mars 1979.

— Accord sur la coopération dans la construction à Mozyr (en Biélorussie) d'une usine de production de levains pour fourrages à partir de paraffines de pétrole hautement purifiées, Moscou, le 28 juin 1979; signature; le 28 juin 1979.

— Accord sur les fournitures réciproques de certaines marchandises en 1979, Moscou, le 24 août 1979; signature; le 24 août 1979.

— Accord sur la coopération dans la mise au point de la technologie de liquéfaction du charbon, Moscou, le 18 janvier 1980; signature; le 18 janvier 1980.

— Accord sur les fournitures réciproques de certaines marchandises en 1980, Moscou, le 30 janvier 1980; signature; le 30 janvier 1980.

— Accord sur la coopération dans le domaine de la technique électronique, Varsovie, le 14 mars 1989; signature; le 14 mars 1980.

— Accord sur les voyages des citoyens des deux Etats sans visas, Varsovie, le 13 décembre 1979; approbation; le 23 mai 1980.

— Accord sur les fournitures supplémentaires de certaines marchandises en 1980, Moscou, le 11 septembre 1980; signature; le 11 septembre 1980.

Viêt-nam

— Accord relatif au crédit financier, Varsovie, le 20 décembre 1979; signature; le 20 décembre 1979.

— Convention consulaire, Hanoi, le 22 septembre 1979; ratification; le 1^{er} août 1980.

Yougoslavie

— Accord sur la coopération à long terme dans le domaine des transports, Varsovie, le 25 octobre 1979; ratification; le 8 avril 1989.

— Accord sur la reconnaissance réciproque de l'équivalence des certificats scolaires et des diplômes des écoles supérieures délivrés dans les deux Etats, Belgrade, le 15 septembre 1978; ratification; le 29 mai 1980.

Traités multilatéraux

— Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune des personnes physiques, Mishkolc, le 27 mai 1977; approbation; le 1^{er} janvier 1979.

— Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune des personnes juridiques, Oulan-Bator, le 19 mai 1978; approbation; le 1^{er} janvier 1979.

— Statute of International Institute for the Unification of Private Law, Rome, 15 March 1940; accession; 1 January 1979.

— Accord sur le statut juridique et les facilités accordées au Centre international d'information technique, Moscou, le 26 juin 1973; approbation; le 6 février 1979.

— Convention sur la prévention de la pollution des mers résultant de l'immersion de déchets et autres matières, faite à Londres, Mexico, Moscou et Washington le 29 décembre 1972; ratification; le 22 février 1979.

— Agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts, Geneva, 20 March 1958; ratification; 13 March 1979.

— Convention de l'OIT No 138 concernant l'âge minimum d'admission à l'emploi, adoptée à Genève le 26 juin 1973; ratification; le 22 mars 1979.

— Convention portant création de l'Organisation Internationale de Télécommunication Maritime par Satellites (INMARSAT), Londres, le 3 septembre 1976; ratification; le 16 juillet 1979.

— Accord général sur la spécialisation et la coopération en matière de production chimique exigeant beaucoup d'énergie et moins d'énergie livrée en contrepartie de production exigeant beaucoup d'énergie, Moscou, le 28 juin 1979; approbation; le 26 septembre 1979.

— Convention sur la diffusion et l'utilisation des données résultant de la télédétection de la Terre par satellites, Moscou, le 19 mai 1978; ratification; le 24 décembre 1979.

— Convention de l'OIT No 137 concernant les répercussions sociales des nouvelles méthodes de manutention dans les ports, adoptée le 25 juin 1973 à Genève; ratification; le 22 février 1980.

— Convention relative au transfert des personnes condamnées à des peines de

privation de liberté en vue de purger leur condamnation dans l'Etat de leur nationalité, Berlin, le 19 mai 1978; ratification; le 16 mars 1980.

— Convention de l'OIT No 140 concernant le congé-éducation payé, adoptée le 24 juin 1974 à Genève; ratification; le 23 avril 1980.

— Convention internationale pour la simplification et l'harmonisation des régimes douaniers, Kyoto, le 18 mai 1973; ratification; le 11 mai 1980.

— Accord sur la reconstruction de l'équipage technique des lignes des chemins de fer d'importance internationale, Moscou, le 28 juin 1979; approbation; le 25 mai 1980.

— Convention de l'OIT No 142 concernant le rôle de l'orientation et de la formation professionnelle dans la mise en valeur des ressources humaines, adoptée à Genève le 23 juin 1975; ratification; le 10 octobre 1980.

— Convention de l'OIT No 145 concernant la continuité de l'emploi des gens de mer, adoptée à Genève le 28 octobre 1976; ratification; le 10 octobre 1980.

par Tadeusz Resztik

BIBLIOGRAPHY * BIBLIOGRAPHIE

POLISH YEARBOOK
OF INTERNATIONAL LAW
VOL. XI, 1981—1982
PL ISSN 0554-498X

Polish Bibliography of International Law, 1978

Public International Law

BOOKS

BARTOSZEWICZ Tomasz: Rola GATT w kształtowaniu współczesnych międzynarodowych stosunków gospodarczych [Le rôle du GATT dans la formation des rapports économiques internationaux contemporains. The GATT's Role in Shaping of Contemporary International Economic Relations]. Warszawa: Szkoła Główna Planowania i Statystyki 239 pp., bibliography.

GELBERG Ludwik: Normalizacja stosunków PRL — RFN. Problemy polityczno-prawne [La normalisation des rapports RPP - RFA. Problèmes politico-juridiques. Normalization of Relations between Poland and FRG. Legal and Political Problems]. Warszawa: Książka i Wiedza, Instytut Państwa i Prawa 247 pp., bibliography.

GÓRBIEL Andrzej: Status prawny kosmosu [Le statut juridique du cosmos. Legal Status of Outer Space]. Łódź: Uniwersytet Łódzki 174 pp.

GRABOWSKA Genowefa: Obserwatorzy państw w powszechnych organizacjach międzynarodowych [Les observateurs des Etats dans les organisations internationales universelles. State's observers in Universal International Organizations]. Warszawa: Państwowe Wydawnictwo Naukowe 189 pp., bibliography.

KLEPACKI Zbigniew M.: Organizacje międzynarodowe rozwiniętych państw kapitalistycznych [Les organisations internationales des Etats capitalistes développés. International Organizations of Developed Capitalist Countries]. Warszawa: Państwowe Wydawnictwo Naukowe 457 pp.

KLEPACKI Zbigniew M.: The Organs of International Organizations. Warsaw: Państwowe Wydawnictwo Naukowe 136 pp., bibliography, English version.

ŁOŚ-NOWAK Teresa: Stanowisko Polski w Organizacji Narodów Zjednoczonych w sprawach pokoju i bezpieczeństwa w latach 1945—1955 [La Pologne face aux problèmes de la paix et de la sécurité à l'ONU 1945—1955. Polish Standpoint in the United Nation concerning Peace and Security 1945—1955]. Wrocław: Uniwersytet Wrocławski 226 pp., bibliography, summary in English.

ŁOPUSKI Jan, SYMONIDES Janusz: Międzynarodowe organizacje morskie [Les

organisations maritimes internationales. International Maritime Organizations]. Gdańsk: Wydawnictwo Morskie 292 pp.

MIĘDZYNARODOWE prawo wojenne. Zapobieganie konfliktom zbrojnym, odpowiedzialność za przestępstwa wojenne. Zbiór dokumentów. Wybór, wstęp i przypisy: Marian Flemming [Le droit international de la guerre. Prévention des conflits armés, responsabilité pour les crimes de guerre. Recueil de documents. Choix, introduction et notes: Marian Flemming. International Laws of War. Prevention of Armed Conflicts, Responsibility for War Crimes. Collection of Documents. Selection, introduction and footnotes by Marian Flemming]. Warszawa: Wydawnictwo Ministerstwa Obrony Narodowej 407 pp.

MISIUNA Władysław: Kooperacja i integracja w rolnictwie krajów RWPG: zarys rozwoju procesów i form [La coopération et l'intégration dans l'agriculture des pays du CAEM: précis de développement des processus et des formes. Cooperation and Integration in Agriculture of the CMEA Countries. Outline of Development of Processes and Forms]. Warszawa: Ludowa Spółdzielnia Wydawnicza 388 pp., bibliography.

MOJSIEWICZ Czesław: Pokojowe współistnienie państw o różnych systemach [Le coexistence pacifique des Etats à systèmes différents. Peaceful Coexistence of States of Different Systems]. Warszawa: Ludowa Spółdzielnia Wydawnicza 250 pp., bibliography.

NAHLIK Stanisław E.: Prawo międzynarodowe i stosunki międzynarodowe. T.1 [Le droit international et les rapports internationaux. Vol. 1. International Law and International Relations. Vol. 1.]. Kraków: Uniwersytet Jagielloński 137 pp., bibliography.

PAŁYGA Edward J.: Stolica Apostolska jako uczestnik międzynarodowych stosunków politycznych [Le Saint-Siège en tant que participant aux rapports politiques internationaux. The Holy See as a Partner in International Political Relations]. Warszawa: Centralny Ośrodek Metodyczny Studiów Nauk Politycznych XXI+33 pp.

PIETRASZ Ziemowit: Dyplomatyczna misja specjalna jako instytucja prawa międzynarodowego [La mission diplomatique spéciale en tant qu'institution du droit international. Special Diplomatic Mission as an Institution of International Law]. Lublin: Uniwersytet im. Marii Curie-Skłodowskiej 196 pp., bibliography.

POLSKA i świat. Studia nad prawem międzynarodowym i współczesnymi stosunkami międzynarodowymi. Redaktor: Henryk Olszewski [La Pologne et le monde. Etudes sur le droit international et les rapports internationaux contemporains. Red. Henryk Olszewski. Poland and the World. Studies on International Law and Contemporary International Relations. Ed. by Henryk Olszewski]. Poznań: Uniwersytet im. A. Mickiewicza 657 pp.

RESICH Zbigniew: Polska w obronie praw człowieka [La Pologne dans la défense des droits de l'homme. Poland in Defense of Human Rights]. Warszawa: Książka i Wiedza 160 pp.

ROTOCKI Zbigniew: Neutralność w ramach zbiorowego bezpieczeństwa [La neutralité dans le cadre de la sécurité collective. Neutrality within the Collective Security System]. Wrocław: Ossolineum, Łódzkie Towarzystwo Naukowe 206 pp., bibliography, summary in English.

SANDORSKI Jan: Nieważność umów międzynarodowych [La nullité des accords internationaux. Invalidity of International Agreements]. Poznań: Uniwersytet im. A. Mickiewicza 234 pp., bibliography, summaries in English and Russian.

SIEROSZEWSKI Władysław: Ochrona dóbr kultury w ustawodawstwie UNESCO. Wyd. 2 [La protection des biens de la culture dans la législation de l'UNESCO. 2^e éd. Protection of Cultural Goods in Legislation of UNESCO. 2nd ed.]. Warszawa: Ministerstwo Kultury i Sztuki 172 pp., bibliography, summary in English.

SOSNOWSKI Leszek: Organizacja Jedności Afrykańskiej 1963—1977. Studium prawnomiędzynarodowe [L'Organisation de l'Unité Africaine. 1963 - 1977. Etude de droit international. Organization of African Unity 1963—1977. International Legal Study]. Kraków: Politechnika Krakowska 126 pp., bibliography, summaries in English and French.

SZCZERBOWSKI Zdzisław: Strategiczny dialog rozbrojeniowy SALT [Le dialogue stratégique de désarmement SALT. Strategic Disarmament Dialogue SALT]. Warszawa: Wydawnictwo Ministerstwa Obrony Narodowej 286 pp., bibliography.

ZURAWICKI Leon: Przesłanki tworzenia i działalności przedsiębiorstw wielonarodowych [Les prémisses de la création et de l'activité des entreprises multinationales. Premises of Creation and Activity of Multinational Enterprises]. Warszawa: Uniwersytet Warszawski 173 pp., bibliography.

ARTICLES

ANDERS Przemysław: Polska strefa rybołówstwa morskiego 1978 [La zone polonaise de pêche maritime en 1978. The Polish Fishing Zone of 1978]. *Technika i Gospodarka Morska* No. 4 pp. 211—213.

BEYER William: Unifikacja warunków obrotu w turystyce zagranicznej [L'Unification des conditions des échanges dans le tourisme étranger. Unification of the Terms of Exchange in Abroad Tourism]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 99—117.

BIAŁOCERKIEWICZ Jan: Implementacja konwencji i zaleceń Międzynarodowej Organizacji Pracy [La réalisation des conventions et directives de l'Organisation Internationale du Travail. Implementation of Conventions and Recommendations of the International Labour Organization]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 35—48.

BIAŁOCERKIEWICZ Jan: Prawne i polityczne aspekty członkostwa Międzynarodowej Organizacji Pracy [Les aspects juridiques et politiques de la qualité de membre de l'Organisation Internationale du Travail. Legal and Political Aspects of International Labour Organization Membership]. *Sprawy Międzynarodowe* No. 2 pp. 113—121.

BIERZANEK Remigiusz: Represalia w świetle prac nad rozwojem humanitarnego prawa konfliktów zbrojnych [Les répressailles à la lumière des travaux sur le développement du droit humanitaire des conflits armés. Reprisal in the Light of Work on the Development of Humanitarian Law of Armed Conflicts]. *Sprawy Międzynarodowe* No. 4 pp. 129—140.

BUGAJ Tadeusz: Polityczne i prawne bariery repatriacji dzieci polskich z krajów pozaeuropejskich po II wojnie światowej. [Les barrières politiques et juridiques de la répatiation des enfants polonais des pays non européens après la II^e Guerre Mondiale. Political and Legal Barriers of the Polish Children Repatriation from the Non-European Countries after the Second World War]. *Prace Karkonoskiego Towarzystwa Naukowego* [1976] No. 8 pp. 6—41.

CZAJA Jan: Watykan a współczesne stosunki międzynarodowe [Le Vatican et les rapports internationaux contemporains. The Vatican and Contemporary International Relations]. *Sprawy Międzynarodowe* No. 1 pp. 24—43.

CZAJKOWSKI Jerzy: Konwencja o ochronie środowiska morskiego obszaru Morza Bałtyckiego [Convention sur la protection de l'environnement dans la région de la mer Baltique. The Convention on Environmental Protection of the Maritime Region of the Baltic Sea]. *Przegląd Morski* No. 1 pp. 63—69.

DŁUGOSZ Stanisław: Zasada największego uprzywilejowania — nowe aspekty [Le principe de la nation la plus favorisée — aspects nouveaux. The Most Favoured Nation Clause — New Aspects]. *Handel Zagraniczny* No. 2 pp. 7—8.

DOBROSIELSKI Marian: The Conference on Security and Cooperation in Europe and Peaceful Coexistence. *Polish Round Table* vol. 8 pp. 87—97, English version.

FIUMEL Henryk de: W sprawie zakresu przedmiotowego projektowanej umowy między RWPG i EWG [L'object du traité proposé entre le CAEM et la CEE. On the Scope of Intended Agreement between the CMEA and the EEC]. *Państwo i Prawo* No. 11 pp. 38—46.

FRANKOWSKA Maria: Metody ilościowe w badaniach nad umowami międzynarodowymi [Les méthodes quantitatives dans l'étude des accords internationaux. Quantitative Methods in Studying International Treaties]. *Sprawy Międzynarodowe* No. 2 pp. 133—146.

GELBERG Ludwik: Czy istnieje nadal Rzesza Niemiecka? [Est-ce que le Reich allemand existe toujours? Does the German Reich still Exist?]. *Państwo i Prawo* No. 5 pp. 44—53.

GIERYCZ Dorota: Criteria of Prohibition of the Use of Weapons in International Relations. *Studies on International Relations* No. 10 pp. 59—76, English version.

GÓRALCZYK Wojciech: Les nouvelles lois polonaises concernant la mer territoriale, la zone de pêche et le plateau continental. *Droit Polonais Contemporain* No. 4 pp. 5—19, French version.

GÓRALCZYK Wojciech, SYMONIDES Janusz: Dalszy krok na drodze do Konwencji

Prawa Morza [Encore un pas menant vers la Convention de Droit maritime. Another Step towards the Convention on the Law of the Sea]. *Technika i Gospodarka Morska* No. 9 pp. 532—534.

GÓRBIEL Andrzej: Gdzie zaczyna się przestrzeń kosmiczna w znaczeniu prawnym [Où commence l'espace cosmique du point de vue du droit. Where is the Beginning of the Outer Space]. *Astronautyka* No. 3 pp. 3—6.

GÓRBIEL Andrzej: Istota i znaczenie pojęcia zbrojnej agresji [La nature de la notion d'agression armée. Substance and Significance of the Notion of Armed Aggression]. *Acta Universitatis Lodzensis Nauki Polityczne* [1977] No. 34 pp. 3—19, summary in French.

GÓRBIEL Andrzej: Międzynarodowy spór o orbitę geostacjonarną [Différend international portant sur l'orbite géostationnaire. International Dispute Concerning Geostationary Orbit]. *Przegląd Stosunków Międzynarodowych* No. 3 pp. 55—66.

GÓRBIEL Andrzej: Prawne problemy określenia przestrzeni kosmicznej [Les problèmes juridiques de la définition de l'espace cosmique. Legal Problems concerning the Definition of the Outer Space]. *Acta Universitatis Lodzensis Nauki Polityczne* [1977] No. 34 pp. 55—91, summary in French.

GÓRBIEL Andrzej: The Notion of Armed Aggression. *Studies on International Relations* No. 10 pp. 76—91, English version.

GRABOWSKA Genowefa: Problem eksploatacji dna mórz i oceanów poza zasięgiem jurysdykcji państwowej [Le problème de l'exploitation du fond des mers et océans en dehors de la juridiction de l'Etat. Problems of exploitation of the Sea-Beds and the Ocean-Floors beyond the State's Jurisdiction]. *Prace Naukowe Uniwersytetu Śląskiego Problemy Prawne Górnictwa* No. 2 pp. 29—49, summaries in German and Russian.

GRABOWSKA Genowefa: Uczestnictwo państw nieczłonkowskich w powszechnych organizacjach międzynarodowych [La participation des Etats non-membres aux organisations internationales universelles. Participation of Non-Member States in Universal International Organizations]. *Sprawy Międzynarodowe* No. 3 pp. 105—119.

JANISZEWSKI Janusz: Z problematyki wyborów bezpośrednich do Parlamentu Europejskiego [Les problèmes des élections directes au Parlement européen. Some Problems in Direct Election to the European Parliament]. *Przegląd Stosunków Międzynarodowych* No. 4 pp. 7—27.

JASUDOWICZ Tadeusz: Przedawnienie w prawie międzynarodowym [La prescription en droit international. Prescription in International Law]. *Przegląd Stosunków Międzynarodowych* No. 5 pp. 17—39.

JASUDOWICZ Tadeusz: Zasoby naturalne dzielone w stosunkach międzynarodowych [Les ressources naturelles dans les rapports internationaux. Natural Shared Resources in International Law]. *Sprawy Międzynarodowe* No. 9 pp. 44—55.

JAWORSKI Marek: Bałtyk jako przedmiot współpracy państw nadbrzeżnych [La mer Baltique en tant qu'objet de la coopération des Etats situés sur le littoral. The Baltic as the Subject of Cooperation of Coastal States]. *Sprawy Międzynarodowe* No. 2 pp. 20—38.

JODŁOWSKI Jerzy: W kwestii zakresu mocy obowiązującej niektórych umów międzynarodowych w obrocie prawnym [A propos de la force obligatoire de certains accords internationaux dans l'échange juridique. On the Scope of Binding Force of Some International Agreements in Legal Intercourse]. *Nowe Prawo* No. 7/8 pp. 1061—1070.

KLAFKOWSKI Alfons: Final Act of the Conference on Security and Cooperation in Europe — Foundations of Legal Interpretation. *Polish Round Table* vol. 8 pp. 99—107, English version.

KOCOT Kazimierz: Rozbrojenie a ochrona środowiska [Le désarmement et la protection de l'environnement. Disarmament and Environment Protection]. *Sprawy Międzynarodowe* No. 11 pp. 57—69.

KOLASA Jan: Rozstrzyganie sporów z handlu międzynarodowego w GATT [La solution des litiges dans le commerce international au sein du GATT. The Settlement of Disputes in International Trade at GATT]. *Państwo i Prawo* No. 4 pp. 76—86.

KOLASA Jan: Z zagadnień kontroli międzynarodowej [Des problèmes du contrôle international (concerne le GATT). Problems of international Control (concerning GATT)]. *Przegląd Stosunków Międzynarodowych* No. 3 pp. 23—40.

KOPCZYŃSKI Bohdan: Zakres jurysdykcji polskiego okrętu wojennego wobec obcego statku i okrętu wojennego w świetle prawa morskiego [La juridiction d'un navire de guerre polonais vis-à-vis d'un bateau et navire de guerre étranger à la lumière du droit maritime. The Scope of Jurisdiction of a Polish Warship with respect to a Foreign Ship and a Warship in the Light of Maritime Law]. *Państwo i Prawo* No. 8/9 pp. 147—152.

KOSTECKI Wojciech: Propozycja objaśniania pojęć i wyjaśniania zjawisk: „poko-jowe współistnienie” i „odprężenie międzynarodowe” [Une proposition d'interprétation des notions: «coexistence pacifique» et «détente internationale». Suggestion of an Interpretation of the Notions: “Peaceful Coexistence” and “International Détente”]. *Studia Nauk Politycznych* No. 4 pp. 161—176.

KOWALSKI Andrzej: Kształtowanie się norm prawnomiędzynarodowych o ochronie morza przed zanieczyszczeniem [La formation des règles de droit international portant sur la protection de la mer contre la pollution. Shaping of the International Legal Norms on Protection of the Sea against Pollution]. *Studia Prawnicze* No. 4 pp. 109—134.

KOWALSKI Marian: Umowy międzynarodowe PRL—ZSRR. (Próba zastosowania metod statystycznych oraz elektronicznej techniki obliczeniowej do badań nad umowami. [Les accords internationaux entre la RPP et l'URSS. Essai d'application des méthodes statistiques et de la technique électronique aux études sur les accords.

Treaties concluded between Poland and the USSR (Attempts at the Application of Statistic Methods and Electronic Data Processing in Studies on Treaties]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 49—73.

KOZŁOWSKI Zdzisław: Prawnomiędzynarodowe zasady ochrony środowiska morskigo [Les principes de droit international se rapportant à la protection de l'environnement maritime. International Legal Principles of Environmental Protection of the Sea]. *Przegląd Morski* No. 5 pp. 60—69.

KRANZ Jerzy: Praktyka głosowania w Radzie Ministrów Wspólnot Europejskich [La pratique du vote dans le Conseil des ministres des Communautés européennes. Voting Practice in the Council of the Ministers in European Communities]. *Studia Prawnicze* No. 4 pp. 163—198.

LACHS Małgorzata: Charakter prawny uchwał podejmowanych przez międzynarodowe organizacje gospodarcze państw socjalistycznych [Le caractère juridique des décisions prises par les organisations économiques internationales des Etats socialistes. Legal Character of Decisions taken by the International Economic Organizations of the Socialist States]. *Studia Prawnicze* No. 2 pp. 135—167.

LACHS Małgorzata: Les résolutions des organisations économiques internationales des Etats membres du CAEM et le droit interne de la République Populaire de Pologne. *Droit Polonais Contemporain* No. 1 pp. 19—31, French version.

LACHS Manfred: Prawo w kosmosie [Le droit dans le cosmos. Law in Outer Space]. *Polska* No. 7 pp. 18—19, 48.

LEBIECKI Andrzej: System załatwiania sporów międzynarodowych [Le système de règlement des différends internationaux. The System of Settling of International Disputes]. *Zeszyty Naukowe Uniwersytetu Gdańskiego Nauki Polityczne* No. 5 pp. 70—81, summary in English and Russian.

LEWANDOWSKI Janusz: Wolność mórz jako czynnik liberalizacji handlu morskigo [La liberté des mers en tant que facteur de libéralisation du commerce maritime. Freedom of the Seas as a Factor of Sea Trade Liberalising]. *Zeszyty Naukowe Uniwersytetu Gdańskiego Ekonomika Transportu Morskigo* No. 6 pp. 97—110, bibliography, summaries in English and Russian.

LIPIŃSKI Aleksander: Górnictwo szelfowe. (Zakres i metoda regulacji prawnej) [L'exploitation minière du plateau continental (règlement juridique). Shelf Mining (Scope and Methods of Legal Regulations)]. *Przegląd Ustawodawstwa Gospodarczego* No. 10 pp. 285—291.

MAKARCZYK Jerzy: Rola prawa międzynarodowego w kształtowaniu nowego międzynarodowego porządku gospodarczego [Le rôle du droit international dans la formation d'un nouvel ordre économique international. The Role of the International Law in Shaping a New International Economic Order]. *Państwo i Prawo* No. 1 pp. 33—47.

MENKES Jerzy: Pojęcie uchwał Europejskiej Wspólnoty Gospodarczej [La notion

de résolutions de la Communauté économique européenne, Notion of Resolutions of the European Economic Community]. *Przegląd Stosunków Międzynarodowych* No. 6 pp. 75—87.

MENKES Jerzy: Prawny charakter rezolucji Zgromadzenia Ogólnego ONZ [Le caractère juridique des résolutions de l'Assemblée Générale de l'ONU. Legal Charter of UN General Assembly Resolutions]. *Sprawy Międzynarodowe* No. 9 pp. 139—146.

MICHALSKA Anna: Europejska Karta Społeczna [La Charte sociale européenne. The European Social Charter]. *Ruch Prawniczy i Ekonomiczny* No. 4 pp. 75—85, summary in French.

MICHALSKA ANNA: Europejska Konwencja Praw Człowieka [Convention européenne des Droits de l'Homme. European Convention on Human Rights. *Ruch Prawniczy i Ekonomiczny* No. 3 pp. 21—35, summary in French.

MULEWICZ Jarosław: Stosunki zewnętrzne Rady Wzajemnej Pomocy Gospodarczej [Les relations extérieures du CAEM. External Relations of the Council for Mutual Economic Assistance]. *Sprawy Międzynarodowe* No. 3 pp. 33—46.

MUSZALSKI Wojciech: Działalność Międzynarodowej Organizacji Pracy w dziedzinie bezpieczeństwa i higieny pracy [L'activité de l'Organisation Internationale du Travail dans le domaine de la sécurité et de l'hygiène du travail. Activity of the International Labour Organization in the Sphere of Safety and Hygiene of Working Conditions]. *Praca i Zabezpieczenie Społeczne* No. 10 pp. 39—45.

NENEMAN Władysław: Ochrona praw człowieka na forum ONZ [La protection des droits de l'homme à l'ONU. Human Rights Protection in the UN]. *Sprawy Międzynarodowe* No. 6 pp. 103—110.

NOSIADEK Grzegorz: Przesłanki i kryteria wspólnej produkcji krajów RWPG [Les critères de la production commune des pays du CAEM. Premises and Criteria of CMEA Countries Joint Production]. *Sprawy Międzynarodowe* No. 2 pp. 76—89.

NOWAK Zdzisław: Stan i perspektywy systemu integracyjnego EWG [L'état et les perspectives du système d'intégration de la CEE. The State and Perspectives of Integration System of the EEC]. *Przegląd Zachodni* No. 3 pp. 1—14.

PAŁYGA Edward J.: Strony stosunków międzynarodowych. (Próba typologii). [Les parties des rapports internationaux. Essai de typologie. Parties to International Relations. Attempt at Typology]. *Studia Nauk Politycznych* No. 1 pp. 67—78.

PAŁUGA Edward J.: Uznanie Polski Ludowej jako pełnoprawnego podmiotu stosunków dyplomatycznych (1944—1946) [La reconnaissance de la Pologne Populaire en tant que sujet de plein droit des rapports diplomatiques. 1944 - 1946. Recognition of People's Poland as a Full-Fledged Subject of Diplomatic Relations. 1944—1946]. *Studia Nauk Politycznych* No. 5 pp. 147—160.

PAŹDZIÓR Bolesław: Wyznaczanie państw o „największym znaczeniu w przemyśle” do Rady Administracyjnej Międzynarodowej Organizacji Pracy [La désignation des

Etats ayant «la plus grande importance dans l'industrie» au Conseil administratif de l'Organisation Internationale du Travail. Designation of "Most Important Industrial" States to the Administrative Council of the ILO]. *Przegląd Stosunków Międzynarodowych* No. 5 pp. 61—75.

PIEŃKOS Jerzy: Sukcesja państw w odniesieniu do umów międzynarodowych w świetle prac kodyfikacyjnych Komisji Prawa Międzynarodowego ONZ [La succession d'Etats en matière de traités internationaux à la lumière des travaux de codification de la Commission de Droit International de l'ONU. Succession of States with Regard to International Treaties in the Light of Codification Work of UN International Law Commission]. *Sprawy Międzynarodowe* No. 2 pp. 147—157.

PŁAWUCHA Stanisław: Ekstradycja, przestępstwo ekstradycyjne oraz azyl [Extradition, délit d'extradition et asile. Extradition, Extradition Crime and Asylum]. *Zeszyty Naukowe Wyższej Szkoły Oficerskiej w Szczytnie* No. 3 pp. 575—595.

PRYSTROM Janusz: Rokowania w sprawie redukcji sił zbrojnych i zbrojeń w Europie Środkowej. Bilans i perspektywy [Négociation portant sur la réduction des forces armées en Europe centrale. Bilan et perspectives. Negotiations on Reduction of Armed Forces and Armaments in Central Europe. Results and Perspectives]. *Nowe Drogi* No. 10 pp. 170—179.

RAJCHEL Kazimierz: Wybrane aspekty prawne i organizacyjne współpracy międzynarodowej w zakresie ochrony porządku i bezpieczeństwa w ruchu drogowym (ze szczególnym uwzględnieniem praktyki krajów socjalistycznych) [Quelques aspects juridiques et organisationnels de la coopération internationale dans le domaine de la protection de l'ordre et de la sécurité dans la circulation routière (compte tenu particulièrement de la pratique des pays socialistes). Some Legal and Organizational Aspects of International Cooperation in the Sphere of Protection of Order and Security in Road Transport (with Special Emphasis of the Practice of the Socialist Countries)]. *Patologia Społeczna, Zapobieganie* vol. 6 pp. 44—56, summaries in English and Russian.

RESICH Zbigniew: Respecting Human Rights in the Declaration of Principles of the Final Act of the Conference on Security and Cooperation in Europe. *Polish Round Table* vol. 8 pp. 109—115, English version.

ROZALICZ Kazimierz: Bilateral Political Declarations of Poland and Western Countries in the 1970's. *Studies on International Relations* No. 10 pp. 25—41, English version.

RUTKOWSKI Jerzy: Rola i znaczenie Organizacji Wyżywienia i Rolnictwa (FAO) w rozwoju współpracy międzynarodowej [Le rôle et l'importance de la FAO pour le développement de la coopération internationale. Role and Significance of Food and Agriculture Organization (FAO) in the Development of International Cooperation]. *Handel Zagraniczny* No. 10 pp. 7—10.

SAWICKI Stefan: System paszportowo-wizowy [Le système de passeport et de visas. Passport and Visa System]. *Sprawy Międzynarodowe* No. 11 pp. 149—160.

SONNENFELD Renata: Podstawy prawne kompetencji uchwałodawczej Rady Bezpieczeństwa Narodów Zjednoczonych [Les fondements juridiques de la compétence du Conseil de Sécurité des Nations Unies dans le domaine de la prise de résolutions. Legal Basis of the Power, of the United Nations Security Council to adopt Resolutions]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 17—34.

SOSNOWSKI Leszek: Pozycja prawna najemników we współczesnym prawie międzynarodowym [La situation légale des mercenaires en droit international contemporain. Legal Status of Mercenaries in Contemporary International Law]. *Wojskowy Przegląd Prawniczy* No. 2 pp. 181—188.

STRABURZYŃSKI Andrzej: Archeologia podmorska a sytuacja prawna dna mórz i oceanów [L'archéologie sous-marine et la situation légale du fond des mers et océans. An Under-Sea Archeology and Legal Situation of the Sea and Ocean-Beds]. *Zeszyty Naukowe Uniwersytetu Gdańskiego Prawo* 1977 No. 5 pp. 37—48, summaries in English and Russian.

SUTOR Julian: Funkcje konsularne w zakresie obrotu prawnego z zagranicą [Les fonctions consulaires dans le domaine des rapports juridiques avec l'étranger. Consular Functions in the Legal Turnover with Abroad]. *Palestra* No. 9 pp. 42—49.

SUTOR Julian: Funkcje współczesnej dyplomacji [Les fonctions de la diplomatie contemporaine. Functions of Contemporary Diplomacy]. *Sprawy Międzynarodowe* No. 3 pp. 24—32.

SUTOR Julian: Niektóre problemy współczesnego prawa konsularnego [Certains problèmes du droit consulaire contemporain. Some Problems of Contemporary Consular Law]. *Przegląd Stosunków Międzynarodowych* No. 4 pp. 76—89.

SUTOR Julian: Odpowiedzialność osób korzystających z przywilejów i immunitetów międzynarodowych za wypadki spowodowane na terytorium PRL [Responsabilité des personnes bénéficiant des privilèges et des immunités internationales pour les accidents causés sur le territoire de la RPP. Responsibility of Persons Enjoying International Privileges and Immunities for the Accidents caused on the Territory of Poland]. *Nowe Prawo* No. 7/8 pp. 1141—1152.

SUTOR Julian: Stosunki handlowo-gospodarcze z zagranicą a prawo dyplomatyczne i konsularne [Les rapports commerciaux et économiques avec l'étranger; le droit diplomatique et consulaire. Trade and Economic Relations with Abroad; Diplomatic and Consular Law]. *Handel Zagraniczny* No. 11 pp. 11—14.

SYMONIDES Janusz: Międzynarodowe znaczenie Powszechnej Deklaracji Praw Człowieka [L'importance internationale de la Déclaration universelle des Droits de l'Homme. International Significance of the Universal Declaration of Human Rights]. *Sprawy Międzynarodowe* No. 12 pp. 15—26.

SYMONIDES Janusz: Poland's Contribution toward Shaping the International Model of Human Rights. *Studies on International Relations* No. 11 pp. 7—16 English version.

SYMONIDES Janusz: Political and Legal Foundations of Peaceful Coexistence in the Period of Détente. *Polish Round Table* vol. 8 pp. 73—85, English version.

SYMONIDES Janusz: Morze terytorialne PRL [La mer territoriale de la République Populaire de Pologne. Territorial Sea of the Polish People's Republic. *Technika i Gospodarka Morska* No. 4, pp. 209—214.

TIMOSZENKO Aleksander S.: Współpraca międzynarodowa w zakresie ochrony środowiska naturalnego w ramach Organizacji Narodów Zjednoczonych [La collaboration internationale dans le domaine de la protection de l'environnement dans le cadre de l'UN. International Cooperation in Protection of Environment within the UN]. *Sprawy Międzynarodowe* No. 5 pp. 90—101.

TRAWCZYŃSKI Jacek M.: Prawnomiędzynarodowe środki zwalczania aktów terroru wobec osób chronionych prawem międzynarodowym [Les mesures de droit international dirigées contre les actes de terreur envers les personnes protégées par le droit international. Measures of International Law to Prevent Terrorism Against Persons Protected by International Law]. *Przegląd Stosunków Międzynarodowych* No. 5 pp. 7—16.

TRAWCZYŃSKI Jacek M.: Uwagi o statusie prawnym attaché wojskowego [Remarques sur le statut légal de l'attaché militaire. Some Remarks on Legal Status of Military Attaché]. *Wojskowy Przegląd Prawniczy* No. 1 pp. 53—58.

TUPIN Ryszard: Unifikacja Statusu prawnego międzypaństwowych organizacji ekonomicznych krajów RWPG [L'unification du statut légal des organisations économiques intergouvernementales des pays du CAEM. Standardization of the Legal Status of Interstate Economic Organizations of CMEA Countries]. *Sprawy Międzynarodowe* No. 10 pp. 121—128.

TYNEL Andrzej: Z problematyki unifikacji zasad obrotu turystycznego w ramach RWPG [Les problèmes de l'unification des principes de l'échange touristique dans le cadre du CAEM. Some Problems of Standardization of Rules in Tourism within the CMEA]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 119—126.

TYRANOWSKI Jerzy: Prawo do samostanowienia a zasada integralności terytorialnej i nienaruszalności granic [Le droit à l'autodétermination et le principe de l'intégrité territoriale et l'inviolabilité des frontières. The Right to Self-Determination and the Principle of Territorial Integrity and Inviolability of Frontiers]. *Państwo i Prawo* No. 12 pp. 30—42.

TYRAŃSKI Teodor: Wojna powietrzna w międzynarodowym prawie wojennym [La guerre aérienne en droit international de la guerre. Aerial Warfare in International Laws of War]. *Przegląd Wojsk Lotniczych i Wojsk Obrony Powietrznej Kraju*. No. 7/8 pp. 68—75, bibliography.

WĘGRZYN Jacek: Przywilej nietykalności pomieszczeń urzędowych i mieszkań członków urzędu konsularnego w konwencjach konsularnych obowiązujących Polskę [Le privilège de l'inviolabilité des locaux officiels et des appartements des membres de l'office consulaire dans les conventions consulaires en vigueur en Po-

logne. Privilege of Inviolability of Offices and Apartments of the Members of Consulate in the Consular Conventions binding Poland]. *Zeszyty Naukowe Wyższej Szkoły w Szczytnie* No. 1 pp. 115—140.

WIECZOREK Włodzimierz: Disarmament Accords and Détente. *Polish Perspectives* No. 6 pp. 15—19, English version.

WIERZBICKI Bogdan: Prace Organizacji Narodów Zjednoczonych nad konwencją przeciwko braniu zakładników [Les travaux de l'ONU concernant la convention contre la prise des otages. UN Work on the Convention Against Taking the Hostages]. *Sprawy Międzynarodowe* No. 12 pp. 152—160.

WIERZBICKI Bogdan: Terroryzm międzynarodowy. Pojęcie, źródła, zwalczanie [Le terrorisme international. Notion, sources, mesures préventives. International Terrorism. Notion, Sources, Fighting Against]. *Zeszyty Naukowe Akademii Spraw Wewnętrznych* No. 20 pp. 166—183, summaries in Russian, English and German.

WIEWIÓROWSKA Krystyna: Międzynarodowa współpraca w kosmosie [La coopération internationale dans le cosmos. International Cooperation in Outer Space]. *Sprawy Międzynarodowe* No. 7/8 pp. 78—90.

WOLFKE Karol: Umowa dwustronna jako narzędzie międzynarodowej ochrony i ulepszenia środowiska [L'accord bilatéral en tant qu'instrument de la protection internationale et de perfectionnement de l'environnement. Bilateral Agreement as an International Instrument of Protection and Improvement of Environment]. *Acta Universitatis Wratislaviensis Przegląd Administracji* 1977 No. 9 pp. 31—40, summary in English.

ZIEWIŃSKI Jan: Prawnomiędzynarodowa ochrona formacji obrony cywilnej [La protection par le droit international des formations de la défense civile. International Legal Protection of the Units of Civil Defense]. *Przegląd Obrotu Terytorium Kraju* No. 1 pp. 147—154.

ZYLICZ Marek: Prawo astronautyczne i aeronautyczne [Le droit astronautique et aéronautique. Space and Air Law]. *Prawo i Życie* No. 30.

Private International Law

BOOKS

JANUSZKIEWICZ Włodzimierz, Rutkowski Krzysztof: Spedycja lotnicza [L'expédition aérienne. Forwarding by Air]. Warszawa: Szkoła Główna Planowania i Statystyki 166 pp., bibliography.

KALUS Stanisław: Międzynarodowe stosunki pracy. Wybrane zagadnienia kolizyjne [Les rapports de travail internationaux. Certains problèmes de collision. International Labour Relations. Selected Problems of the Law of Conflicts]. Warszawa: Wydawnictwo Prawnicze 151 pp., bibliography, summaries in German.

KAMIŃSKA Jolanta, MARCZAK Feliks: Analiza konwencji CMR (Convention Relative au Contrat de Transport International de Marchandises par Route) z punktu widzenia potrzeb przyszłej jej rewizji [L'analyse de la Convention Relative

au Contrat de Transport International de Marchandises par Route du point de vue de sa prochaine révision. Analysis of the CMR Convention from the Point of View of its Future Revision]. Warszawa: Ośrodek Badawczy Ekonomiki Transportu 56 pp., bibliography.

KONWENCJE międzynarodowe w zakresie prawa autorskiego i praw pokrewnych [Conventions internationales portant sur les droits d'auteur et autres droits connexes. International Conventions on Copyright and Other Related Rights]. Kraków: Państwowe Wydawnictwo Naukowe, Uniwersytet Jagielloński 184 pp.

NOWAKOWSKI Zygmunt K.: Prawo cywilne i handlowe obrotu międzynarodowego [Le droit civil et commercial des échanges internationaux. Civil and Trade Law in International Exchange]. Poznań: Akademia Ekonomiczna 1977 281 pp.

RAPPORTS polonais. Présentés au Dixième Congrès International de Droit Comparé. Wrocław: Ossolineum, Komitet Nauk Prawnych 380 pp.

SOŚNIAK Mieczysław: Prawo prywatne międzynarodowe [Le droit international privé. Private International Law]. Katowice: Uniwersytet Śląski 245 pp.

ARTICLES

BRAŚ Władysław: Odpowiedzialność za nieszczęśliwe wypadki w międzynarodowych przewozach pasażerskich [La responsabilité pour les accidents survenus dans le transport international de passagers. Liability for Accidents in International Passenger Transport]. *Problemy Ekonomiki Transportu* No. 1 pp. 41—61.

CHYLA Euzebiusz: Aspekty prawne powoływania przedstawicielstw firm obcych w Polsce podejmujących kooperację z polskimi organizacjami przemysłowymi i handlowymi [Les aspects juridiques de l'établissement en Pologne des représentants des maisons de commerce étrangères en vue de coopération avec les organismes industriels et commerciaux polonais. Legal Aspects of Foreign Firm Agencies in Poland Undertaking Cooperation with the Polish Industrial and Trade Enterprises]. *Handel Zagraniczny* No. 3 pp. 45—46.

DRAGUN Maria: Jednostki obliczeniowe dla określenia pułapu odpowiedzialności przewoźnika w międzynarodowym prawie przewozowym [Les unités permettant de définir les limites de la responsabilité du transporteur en droit international de transport. Computation Units for Defining the Limits of the Carrier Liability in International Transport Law]. *Przegląd Ustawodawstwa Gospodarczego* No. 2 pp. 39—44.

GODLEWSKI Jerzy: Rola taryf bezpośrednich w międzynarodowym obrocie towarowym [Le rôle des tarifs directs dans l'échange international de marchandises. The Role of Direct Tariffs in International Goods Exchange]. *Eksploatacja Kolei* No. 3 pp. 94—97.

GOLA Alfred: Zagadnienia związane z nabywaniem przez cudzoziemców praw do nieruchomości położonych w Polsce [Problèmes liés à l'acquisition par les étrangers des droits aux immeubles situés en Pologne. Problems concerning Acquisition by

Foreigners of Rights to Real Properties situated in Poland]. *Problemy Wymiaru Sprawiedliwości* No. 15 pp. 17—23.

JANIK Andrzej: Problem statusu przedsiębiorstw w projekcie kodeksu handlu międzynarodowego [Le problème du Statut des entreprises dans le projet de code du commerce international, Problem of Status of Enterprises in a Draft Code of International Trade]. *Przegląd Stosunków Międzynarodowych* No. 6 pp. 29—43.

KACZYŃSKI Waldemar: Projekt nowej konwencji o międzynarodowej sprzedaży towarów [Le projet d'une nouvelle convention sur la vente internationale des marchandises, A New Draft Convention on International Goods Sale]. *Prace naukowe Uniwersytetu Śląskiego Problemy Prawne Handlu Zagranicznego* No. 2 pp. 11—29, summaries in French and Russian.

KEPIŃSKI Marian: Prace nad opracowaniem przepisów o znaku europejskim [Les travaux concernant l'élaboration des dispositions sur la marque européenne, Studies on Preparation of European Mark Rules]. *Prace Naukowe Uniwersytetu Śląskiego Problemy Prawne Handlu Zagranicznego* No. 2 pp. 30—49, summaries in French and Russian.

KEPIŃSKI Marian: Relationship Between the Norms of the Trademark Law and the Norms of the Law Against Unfair Competition in Polish Law. *International Protection of Industrial Property* vol. 1 pp. 67—82.

KOŁAKOWSKA Lidia: Problem rozgraniczenia zakresów odpowiedzialności przedsiębiorstwa produkującego i jednostki handlu zagranicznego w umowie specjalizacji i kooperacji w ramach RWPG [Le problème de la délimitation de l'étendue de responsabilité de l'entreprise et de l'unité du commerce extérieur dans le contrat de spécialisation et de coopération dans le cadre du CAEM, Problem of Delimitation of Liability of Enterprises and Foreign Trade Units in Contract of Forwarding and Cooperation within the CMEA]. *Prace Naukowe Uniwersytetu Śląskiego Problemy Prawne Handlu Zagranicznego* No. 2 pp. 60—70, summaries in French and Russian.

LUDWICZAK Witalis: Zasada równouprawnienia płci w zakresie małżeńskich stosunków osobistych i majątkowych w systemach międzynarodowego prawa prywatnego państw socjalistycznych ze szczególnym uwzględnieniem prawa polskiego [Le principe d'égalité des sexes dans le domaine du régime matrimonial d'après les systèmes du droit international privé des pays socialistes, compte tenu particulièrement du droit polonais, Principle of Equality of Sexes in Personal and Property Matrimonial Relations in the Systems of Private International Law of the Socialist Countries with Special Reference to the Polish Law]. *Studia Prawnicze* No. 3 pp. 29—40.

MACZYŃSKI Andrzej: Zamieszkanie jako podstawa łącznika normy kolizyjnej [Le domicile comme point de rattachement en droit international privé, Domicile as a Base of a Connecting Factor of the Law of Conflict]. *Zeszyty Naukowe Uniwersytetu Jagiellońskiego Prace Prawnicze* No. 81 pp. 41—62, summary in French.

MOŚCICKI Jacek, POZNAŃSKI Kazimierz: Patenty i licencje w kontaktach ekonomicznych Wschód—Zachód [Les Brevets et licences dans les contacts économiques

Est-Ouest, Patents and Licences in East-west Economic Contacts]. *Sprawy Międzynarodowe* No. 1 pp. 123—138.

NOSIADEK Grzegorz: Problemy działalności wspólnych przedsiębiorstw produkcyjnych krajów RWPG [Les problèmes de l'activité des entreprises de production communes des pays du CAEM. Problems of Joint Activity of Production Enterprises of the CMEA Countries]. *Handel Zagraniczny* No. 3 pp. 38—40.

OGIEGŁO Leszek: Spedycja międzynarodowa. (Regulacja cywilnoprawna) [La réglementation par le droit civil de l'expédition internationale. International Forwarding (Civil Law Regulation)]. *Prace Naukowe Uniwersytetu Śląskiego Problemy Prawne Handlu Zagranicznego* No. 2 pp. 121—136, summaries in French and Russian.

PAZDAN Maksymilian: Uznanie za zmarłego i stwierdzenie zgonu w polskim prawie prywatnym międzynarodowym [La déclaration du décès en droit international privé en Pologne. Presumption of Death and Proof of Death in International Private Law in Poland]. *Prace Naukowe Uniwersytetu Śląskiego Iuridica Silesiana* No. 3 pp. 64—81, summaries in German and Russian.

POPIOŁEK Wojciech: Zawarcie umowy wydawniczej w prawie prywatnym międzynarodowym [La conclusion du contrat d'édition dans le droit international privé. Conclusion of Contract for Publishing in Private International Law]. *Prace Naukowe Uniwersytetu Śląskiego Studia Iuridica Silesiana* No. 3 pp. 82—96, summaries in French and Russian.

POPIOŁEK Wojciech: Z problematyki umów wydawniczych zawieranych przez autorów polskich w obrocie międzynarodowym [Certains problèmes des contrats d'édition conclus par les auteurs polonais dans les échanges internationaux. Some Problems on Contracts for Publishing concluded by the Polish Authors in International Exchange]. *Prace Naukowe Uniwersytetu Śląskiego Problemy Prawne Handlu Zagranicznego* No. 2 pp. 156—173, summaries in French and Russian.

REMBIELIŃSKI Andrzej, KOPROWSKI Józef: Ważniejsze problemy prawne sprzedaży eksportowej na tle o.w.s. [Certains problèmes juridiques de la vente à l'exportation d'après les conditions générales de vente. Some Important Legal Problems of Export Sale against the Background of the General Sale's Conditions]. *Prace Naukowe Uniwersytetu Śląskiego Problemy Prawne Handlu Zagranicznego* No. 2 pp. 88—105, summaries in French and Russian.

SKAPSKI Józef: Zasada równości płci w odniesieniu do stosunków między rodzicami a dziećmi (łącznie z adopcją) w socjalistycznych systemach prawa międzynarodowego prywatnego ze szczególnym uwzględnieniem prawa polskiego [Le principe d'égalité des sexes dans le domaine des rapports existant entre parents et enfants (y compris l'adoption) d'après les systèmes socialistes du droit international privé, compte tenu particulièrement du droit polonais. The Principle of Equality of Sexes in Relations between the Parents and the Children (Adoption Included) in the Systems of the Socialist International and Private Law with the Special Reference to the Polish Law]. *Studia Prawnicze* No. 3 pp. 41—52.

SOSNIAK Mieczysław: Zasada równorzędności płci w zakresie zawarcia, unieważnienia i rozwiązania małżeństwa w socjalistycznych systemach prawa prywatnego

międzynarodowego ze szczególnym uwzględnieniem prawa polskiego [Le principe d'égalité des sexes dans le domaine de la conclusion, de l'annulation et de la résiliation du mariage d'après les systèmes socialistes du droit international privé, compte tenu particulièrement du droit polonais. The Principle of Equality of Sexes concerning Contracting, Annulment and Dissolution of Marriage in the Socialist Systems of Private International Law with Special Reference to the Polish Law]. *Studia Prawnicze* No. 3 pp. 13—27.

STASZKOW Michał: Wynalazki mające zdolność patentową w świetle postanowień konwencji o patencie europejskim [Les inventions ayant la capacité de brevet à la lumière de la convention sur le brevet européen. Inventions of Patent Capacity in the Light of Convention of European Patent]. *Prace Naukowe Uniwersytetu Śląskiego. Problemy Prawa Wynalazczego* No. 4 pp. 49—58, summaries in Russian and German.

SZCZEPANIAK Tadeusz: Rola spedytora międzynarodowego i kierunki rozwoju firm spedycyjnych we współczesnym handlu światowym [Le rôle de l'expéditeur international et les tendances de développement des firmes d'expédition dans le commerce mondial contemporain. The Role of the International Forwarding Agent and Development Trend of Forwarding Firms in Contemporary World Trade]. *Zeszyty Naukowe Uniwersytetu Gdańskiego Ekonomia Handlu Zagranicznego* No. 3 pp. 71—74, summaries in English and Russian.

SZTOMBKA Jan: Dochodzenie roszczeń alimentacyjnych za granicą w trybie konwencji nowojorskiej [La poursuite des prétentions en alimentation à l'étranger en vertu de la convention de New York. Vindication of Alimentation Claims Abroad according to the New York Convention]. *Nowe Prawo* No. 3 pp. 431—439.

SZYMANEK Tadeusz: Rights of Foreign Patent Applicants in the Light of the Recent Case Law of the Supreme Court and the Appeal Tribunal at the Patent Office. *International Protection of Industrial Property* vol. 1 pp. 99—118, English version.

TYNEL Andrzej: Aktualne problemy doskonalenia OWD i RWPG 1968/1975 [Les problèmes actuels du perfectionnement des conditions générales de livraisons dans le cadre du CAEM en 1968/1975. Current Problems of Improvement of the CMEA'S General Delivery Conditions of 1968/1975]. *Przegląd Stosunków Międzynarodowych* No. 5 pp. 51—60.

WERALSKI Marian: L'activité économique des étrangers en Pologne. *Droit Polonais Contemporain* No. 3 pp. 35—40.

ZACHARIASIEWICZ Maria-Anna: Prawo właściwe dla zobowiązań z umów ubezpieczenia [Le droit compétent pour les obligations résultant des contrats d'assurance. Law Applicable for Obligations following from Insurance Contracts]. *Prace Naukowe Uniwersytetu Śląskiego Problemy Prawne Handlu Zagranicznego* No. 2 pp. 106—120, summaries in French and Russian.

Polish Bibliography of International Law, 1979

Public International Law

BOOKS

BŁESZYŃSKI Jan: Konwencja berneńska a polskie prawo autorskie [La Convention de Berne et le droit d'auteur polonais. Bern Convention and the Polish Copyright]. Warszawa: Państwowe Wydawnictwo Naukowe 345 pp., bibliography.

BOMBERA Zdzisław: Międzynarodowe organizacje gospodarcze krajów RWPG [Les organisations économiques internationales des pays du CAEM. International Economic Organizations of the CMEA Countries]. Warszawa: Ministerstwo Obrony Narodowej 250 pp.

GELBERG Ludwik: Zarys prawa międzynarodowego. Wydanie 3 [Précis de droit international. 3^e ed. Outline of International Law. Third Edition]. Warszawa: Państwowe Wydawnictwo Naukowe 307 pp. bibliography.

GŁÓWNE problemy prawne normalizacji stosunków PRL-RFN. Materiały z konferencji naukowej, Warszawa-Popowo, 26—27. II. 1979 r. [Les principaux problèmes juridiques de la normalisation des rapports entre la RPP et la RFA. Matériaux de conférence Warszawa-Popowo, 26—27. II. 1979. Principal Legal Problems of Normalization of Relations between Poland and FRG. Materials of the Conference in Warsaw-Popowo, Feb. 26—27, 1979]. Warszawa: Wydawnictwo Prawnicze, Instytut Badania Prawa Sądowego 105 pp., summaries in English, German and Russian.

GÓRALCZYK Wojciech: Prawo międzynarodowe publiczne w zarysie. Wydanie 2 [Précis de droit international public. 2^e éd. An Outline of Public International Law. Second Edition]. Warszawa: Państwowe Wydawnictwo Naukowe 452 pp., bibliography.

HOŁOWIŃSKI Jan: Prawo międzynarodowe dla ekonomistów [Droit international pour économistes. International Law for Economists]. Poznań: Akademia Ekonomiczna 95 pp.

KLAFKOWSKI Alfons: Prawo międzynarodowe publiczne. Wydanie 5 zmienione [Droit international public. 5^e éd. modifiée. Public International Law. Fifth Edition]. Warszawa: Państwowe Wydawnictwo Naukowe 458 pp.

KLEPACKI Zbigniew M.: Proces podejmowania decyzji w organizacjach międzynarodowych [Le processus de prise de décision dans les organisations internatio-

nales. Decision-Making Process in International Organizations]. Warszawa: Państwowe Wydawnictwo Naukowe 270 pp., bibliography, summaries in Russian and English.

KOLASA Jan: GATT. Z zagadnień tworzenia i stosowania prawa handlu międzynarodowego [GATT — Les problèmes de la création et de l'application du droit de commerce international. GATT. Some Problems Concerning Law-Making and Law Enforcement for International Trade]. Wrocław: Ossolineum, Wrocławskie Towarzystwo Naukowe 190 pp., bibliography, summary in English.

KORNAS Emil: Sprawiedliwość międzynarodowa [La justice internationale. International Justice]. Kraków: Uniwersytet Jagielloński 175 pp.

LATKIEWICZ Helena: Zagadnienia podmiotowości prawnomiędzynarodowej EWG [La Communauté économique internationale en tant que sujet de droit international. International Legal Personality of the EEC]. Warszawa: Państwowe Wydawnictwo Naukowe 323 pp., bibliography.

LEŚKO Teofil: Międzynarodowe prawo konfliktów zbrojnych [Le droit international des conflits armés. International Law on Armed Conflicts]. Warszawa: Wojskowa Akademia Polityczna 270 pp.

LEŚKO Teofil: Wybrane problemy międzynarodowe prawa wojennego [Problèmes choisis du droit international de la guerre. Selected Problems of International Law of War]. Warszawa: Ministerstwo Obrony Narodowej 93 pp.

MISIEWICZ Władysław: Próba konwencyjnego uregulowania problematyki wraków ze szczególnym uwzględnieniem odpowiedzialności za wraki leżące na morzu pełnym [Un essai de règlement par convention du problème des épaves, compte tenu de la responsabilité pour les épaves reposant en pleine mer. An Attempt at the Convention Regulation of the Problem Wrecks with the Special Emphasis on the Liability for Wrecks on the Sea-Bed of the Open Sea]. Gdańsk: Instytut Morski 75 pp., bibliography.

PIONTEK Eugeniusz: EWG. Instrumenty prawne zewnętrznej polityki gospodarczej [La CEE — Instruments juridiques de la politique économique extérieure. EEC. Legal Instruments of External Economic Policy]. Warszawa: Wydawnictwo Prawnicze 275 pp., bibliography, summary in English.

RĄCZKOWSKI Stanisław: Międzynarodowe stosunki finansowe. Wydanie 2 zmienne [Les rapports financiers internationaux. International Financial Relations. Second Revised Edition]. Warszawa: Państwowe Wydawnictwo Naukowe 454 pp., bibliography.

SONNENFELD Renata: Uchwały Rady Bezpieczeństwa Organizacji Narodów Zjednoczonych. Zagadnienia prawne. [Les résolutions du Conseil de Sécurité de l'ONU — Problèmes juridiques. Resolutions of the UN Security Council. Legal Problems]. Warszawa: Polski Instytut Spraw Międzynarodowych 196 pp., bibliography, summary in English.

SUTOR Julian: Pokojowe załatwianie sporów międzynarodowych [Le règlement pacifique des différends internationaux. Peaceful Settlement of International Disputes]. Wrocław: Ossolineum 256 pp., bibliography, summary in English.

TYRANOWSKI Jerzy: Sukcesja państw a traktaty w sprawie granic [La succession des Etats et les traités en matière de frontières. States Succession and Frontier Treaties]. Poznań: Uniwersytet im. Adama Mickiewicza 273 pp., bibliography, summaries in Russian and English.

WIERZBICKI Bogdan: Pojęcie przestępstwa politycznego w prawie międzynarodowym [Notion d'infraction politique en droit international. Notion of Political Crime in International Law]. Warszawa: Państwowe Wydawnictwo Naukowe 184 pp., summaries in French and Russian.

WOLFKE Karol: Międzynarodowe prawo środowiska. (Tworzenie i egzekwowanie) [Le droit international de l'environnement. Création et exécution. International Environmental Law. (Formation and Execution)]. Wrocław: Ossolineum, Wrocławskie Towarzystwo Naukowe 178 pp., bibliography, summary in English.

ARTICLES

ANDERS Przemysław: Zagadnienia prawno-polityczne współczesnego rybołówstwa [Les problèmes juridiques et politiques de la pêche contemporaine. Political and Legal Problems of the Contemporary Fishery]. *Gospodarka Planowa* No. 1 pp. 9—18.

ANTONOWICZ Lech: Mapa polityczna świata ze stanowiska prawa międzynarodowego [La carte politique du monde vue par le droit international. Political Map of the World from International Law Point of View]. *Przegląd Geograficzny* No. 1 pp. 27—38, summaries in Russian and English.

ANTONOWICZ Lech: Status prawnomiędzynarodowy terytoriów zależnych typu niekolonialnego [Le Statut des territoires dépendants de type non colonial du point de vue de droit international. International Legal Status of the Dependent Non-Colonial Territories]. *Annales Universitatis Mariae Curie-Skłodowska* vol. 26 pp. 121—131, summaries in Russian and English.

BANASZEK Jerzy: Międzynarodowy Ośrodek Rozstrzygania Sporów Inwestycyjnych [Le centre international de la solution des litiges en matière d'investissements. International Center for the Settlement of Investments Disputes]. *Sprawy Międzynarodowe* No. 12 pp. 137—146.

BARCZ Jan: Wybrane zagadnienia normalizacji wzajemnych stosunków NRD—RFN w świetle Aktu Końcowego KBWE [Problèmes choisis de la normalisation des rapports réciproques RDA - RFA à la lumière de l'Acte final de la Conférence sur la sécurité et la coopération en Europe. Selected Problems of Normalization of Relations between GDR and GFR in the Light of the Final Act of CSCE (Helsinki)]. *Przegląd Zachodni* No. 4 pp. 75—104.

BIAŁOCERKIEWICZ Jan: Charakter prawny konwencji Międzynarodowej Organizacji Pracy [Le caractère juridique de la convention de l'Organisation Internatio-

nale du Travail. Legal Character of ILO Conventions]. *Przegląd Stosunków Międzynarodowych* No. 6 pp. 55—80.

BIAŁOCERKIEWICZ Jan: Międzynarodowa ochrona praw człowieka w systemie ONZ [La protection internationale des droits de l'homme dans le système des Nations Unies. International Protection of Human Rights in the UN System]. *Acta Universitatis Nicolai Copernici Prawo* No. 17 pp. 3—19, summary in German.

BIAŁOCERKIEWICZ Jan: Międzynarodowe ujednolicenie prawa pracy [L'uniformisation internationale du droit du travail. International Unification of Labour Legislation]. *Sprawy Międzynarodowe* No. 3 pp. 95—102.

BRZOZA Tadeusz: Działalność organizacji międzynarodowych Systemu ONZ w dziedzinie rozwoju budownictwa mieszkaniowego [L'activité des organisations internationales du système de l'ONU dans le domaine du développement de l'habitat. Activity of International Organizations within the UN System in the Development of Housing]. *Gospodarka Planowa* No. 10 pp. 554—559.

BUTKIEWICZ Ewa: Organizacja międzynarodowa jako podmiot odpowiedzialności międzynarodowej. Zagadnienia teorii [L'organisation internationale en tant que sujet de la responsabilité internationale. Problèmes théoriques. International Organization as a Subject of International Law. Theoretical Problems]. *Przegląd Stosunków Międzynarodowych* No. 2 pp. 7—21.

CAŁUS Andrzej: Pojęcie kooperacji przemysłowej w stosunkach Wschód—Zachód. Aspekty ekonomiczne i prawne [La notion de coopération industrielle dans les rapports Est-Ouest. Aspects économiques et juridiques. Notion of Industrial Cooperation in East-West Relations. Economic and Legal Aspects]. *Problemy Handlu Zagranicznego* vol. 12 pp. 58—85.

CHYZANOWSKA Jolanta: Międzynarodowa współpraca gospodarcza Polski w dziedzinie rybołówstwa morskiego [La coopération internationale économique de la Pologne dans le domaine de la pêche maritime. Poland's International Economic Cooperation in Fishery]. *Technika i Gospodarka Morska* No. 1 pp. 10—12.

CIEGLEWICZ Walerian: Międzynarodowa Rada Badań Morza [Le Conseil international des études de la mer. International Council for the Research of the Sea]. *Technika i Gospodarka Morska* No. 8 pp. 460—462.

CZAJA Jan: Normalizacja stosunków krajów socjalistycznych ze Stolicą Apostolską [La normalisation des relations des pays socialistes avec le Saint-Siège. Normalization of Relations between Socialist Countries and the Holy See]. *Sprawy Międzynarodowe* No. 11 pp. 35—50.

CZARKOWSKI Antoni, WORONIECKI Jan: Rozwój międzynarodowej współpracy na rzecz ochrony środowiska naturalnego [Le développement de la coopération internationale au profit de la protection de l'environnement. Development of International Cooperation for Environment Protection]. *Sprawy Międzynarodowe* No. 12 pp. 53—64.

DOBROCYŃSKI Michał: Peaceful Coexistence of Systems and Economic Co-operation. *Studies on International Relations* No. 12 pp. 38—54, English version.

DOBRZYCKI Edmund: Kształtowanie się nowego ładu na morzach świata a III konferencja Prawa Morza ONZ [La formation du nouvel ordre sur les mers du monde et la III^e Conférence du droit de la mer organisée par l'ONU. Shaping of the New Order of the Seas of the World and the III UN Conference on the Law of the Sea]. *Przegląd Zachodnio-Pomorski* No. 1 pp. 7—31.

DONOCIK Grzegorz, KUKULSKI Marek: Organizacja Narodów Zjednoczonych do Spraw Rozwoju Przemysłowego [Organisation des Nations Unies pour le développement industriel. United Nations Industrial Development Organization]. *Sprawy Międzynarodowe* No. 1 pp. 109—120.

DRAGANIK Bohdan: Rybołówstwo państw rozwiniętych w warunkach nowego statusu prawnego mórz [La pêche des Etats développés d'après le nouveau statut juridique des mers. Fishery of the Developed Countries *vis-à-vis* New Legal Status of the Sea]. *Technika i Gospodarka Morska* No. 3 pp. 142—144.

DRZEWIECKI Krzysztof: Cele i zakres działania Rady Nordyckiej [Le but et l'activité du Conseil nordique. Aims and Scope of the Nordic Council's Activity]. *Przegląd Stosunków Międzynarodowych* No. 3 pp. 57—73.

DRZEWIECKI Krzysztof: Konwencja nordycka jako podstawa prawna współpracy skandynawskiej [La Convention nordique en tant que fondement légal de la collaboration scandinave. The Nordic Convention as a Legal Basis of Scandinavian Cooperation]. *Komunikaty Instytutu Bałtyckiego* vol. 16 No. 30 pp. 111—115.

FLEMMING Marian: Organizacja sądownictwa na okupowanym terytorium [l'organisation des tribunaux sur les territoires occupés. Organization of the Judiciary System in Occupied Territories]. *Wojskowy Przegląd Prawniczy* No. 1 pp. 17—34.

FRANKOWSKA Maria: Radziecka ustawa o umowach międzynarodowych [La loi soviétique sur les accords internationaux. Soviet Law on International Agreements]. *Państwo i Prawo* No. 6 pp. 22—35.

GALICKI Zdzisław: Pakty praw człowieka a Europejska konwencja praw człowieka [Les Pactes des droits de l'homme et la Convention européenne des droits de l'homme. Covenants of Human Rights and the European Convention on Human Rights]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 35—46.

GALSTER Jan: Pojęcie standardu w prawie międzynarodowym publicznym [La notion de standard en droit international public. Notion of Standard in Public International Law]. *Przegląd Stosunków Międzynarodowych* No. 2 pp. 23—31.

GARDOCKA Teresa: Przesłanki ekstradycyjne w prawie polskim [Les prémisses d'extradition en droit polonais. Prerequisites of Extradition in the Polish Law]. *Studia Prawnicze* No. 2 pp. 67—106, summaries in Russian and English.

GELBERG Ludwik: Does the German Reich Still Exist? *Polish Western Affairs* No. 1 pp. 102—111, English version.

GELEWSKI Tadeusz M.: Wojna a dziecko na przestrzeni wieków — szczególnie aspekt stosunków międzynarodowych [La guerre et l'enfant à travers les siècles (aspect particulier des rapports internationaux). War ad Child through the Centuries (A Particular Aspect of International Relations)]. *Przegląd Stosunków Międzynarodowych* No. 5 pp. 19—41.

GILAS Janusz: Prawne problemy dumpingu [Les problèmes juridiques du dumping. Legal Problems of Dumping]. *Przegląd Stosunków Międzynarodowych* No. 3 pp. 7—17.

GILAS Janusz: Prawnomiędzynarodowe aspekty przebudowy Odry na nowoczesną drogę wodną [La transformation de l'Odra en voie fluviale moderne — aspects de droit international. International Legal Aspects of the Oder River Modernization]. *Przegląd Stosunków Międzynarodowych* No. 6 pp. 7—15.

GILAS Teresa, GILAS Janusz: Kubańska doktryna prawa międzynarodowego [La doctrine cubaine de droit international. Cuban Doctrine of International Law]. *Przegląd Stosunków Międzynarodowych* No. 5 pp. 85—98.

GÓRAŁ Roman: Wykonywanie kary orzeczonej przez sądy zagraniczne na tle konwencji berlińskiej [Exécution de la peine administrée par les tribunaux étrangers dans le contexte de la convention de Berlin. Execution of the Sentences Passed by the Foreign Courts vis-à-vis Berlin Convention]. *Nowe Prawo* No. 11 pp. 81—93.

GÓRALCZYK Wojciech: Nowe prawo morza [Le nouveau droit de la mer. New Law of the Sea]. *Państwo i Prawo* 8/9 pp. 38—52.

GÓRALCZYK WOJCIECH: Pakty praw człowieka a zagadnienie podmiotowości prawnomiędzynarodowej jednostek [Les pactes des droits de l'homme et la qualité de sujet international appartenant aux individus. Covenants on Human Rights and Question of International Legal Personality of Individuals]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 23—34.

GÓRBIEL Andrzej: Ciała niebieskie w prawie międzynarodowym [Les corps célestes en droit international. Celestial Bodies in International Law]. *Astronautyka* No. 4 pp. 1—4.

GÓRBIEL Andrzej: Istota i ograniczenia prawne wolności kosmosu [Les limites juridiques de la liberté du Cosmos. Essence and Legal Limits of Cosmos Liberty]. *Acta Universitatis Lodziensis — Nauki Polityczne* No. 44 pp. 3—29, summary in French.

GÓRBIEL Andrzej: Międzynarodowy status ciał niebieskich [Le status international des corps célestes. International Status of Celestial Bodies]. *Przegląd Stosunków Międzynarodowych* No. 6 pp. 35—54.

GÓRBIEL Andrzej: Nowe prawo genewskie [Dot. międzynarodowego prawa konfliktów zbrojnych] [Le nouveau droit de Genève relatif aux conflits armés. The New Geneva Law Concerning International Law of Armed Conflicts]. *Przegląd Stosunków Międzynarodowych* No. 4 pp. 121—141.

GRABOWSKA Genowefa: Prawo dyplomatyczne organizacji międzynarodowych [Le droit diplomatique des organisations internationales. Diplomatic Law of International Organizations]. *Państwo i Prawo* No. 4 pp. 41—53.

GRABOWSKA Genowefa: Prawa i obowiązki przedstawicieli państw w uniwersalnych organizacjach międzynarodowych [Droits et obligations des représentants des Etats dans les organisations internationales de caractère universel. Rights and Duties of Representatives of States to Universal International Organizations]. *Sprawy Międzynarodowe* No. 11 pp. 111—126.

GRABOWSKA Genowefa: Zasady wykorzystania dna i podziemia morskiego w pracach III Kodyfikacyjnej konferencji Prawa Morza [Les principes de l'exploitation des fonds marins dans les travaux de la III^e Conférence de codification du droit de la mer. Principles of Sea Bed Exploitation in the Works of the IIIrd Conference on the Law of the Sea Codification]. *Prace Naukowe Uniwersytetu Śląskiego. Problemy Prawne Górnictwa* No. 3 pp. 84—106, summary in Russian.

GRABSKA Wirginia: International Integration and Peaceful Coexistence. *Studies on International Relations* No. 12 pp. 55—73, English version.

HOC Stanisław: Międzynarodowa współpraca państw w walce z zaborem dzieł sztuki [La collaboration internationale des Etats luttant contre l'accaparement des oeuvres d'art. International Cooperation of States against the Seizure of Works of Art]. *Sprawy Międzynarodowe* No. 12 pp. 95—106.

IWANEJKO Marian: Procedury koncyliacyjne UNCTAD — instrument rokowań wielostronnych czy sposób regulowania sporów [Les procédures conciliatoires de l'UNCTAD — un instrument de négociations multilatérales ou un moyen de règlement de différends? Conciliation Procedures of the UNCTAD — an Instrument of Multilateral Negotiations or Means of Disputes Settling?]. *Przegląd Stosunków Międzynarodowych* No. 4 pp. 143—146.

JAKUBOWSKI Jerzy, WIŚNIEWSKI Andrzej W.: Regulamin arbitrażowy UNCITRAL [Le règlement d'arbitrage UNCITRAL. Regulation of UNCITRAL Arbitration]. *Prace Naukowe Uniwersytetu Śląskiego. Problemy Prawne Handlu Zagranicznego* No. 3 pp. 25—37, summaries in Russian and French.

JANICKI Lech: The Federal Republic of Germany's Legal System and the Treaty with Poland of December 7th, 1970. *Studies on International Relations* No. 3 pp. 72—90, English version.

JANISZEWSKI Janusz: RFN wobec wyborów bezpośrednich do Parlamentu Europejskiego [La RFA face aux élections directes au Parlement européen. The FRG in the Face of the Direct Election to the European Parliament]. *Przegląd Stosunków Międzynarodowych* No. 2 pp. 75—104.

JANISZEWSKI Władysław: Zarys rozwoju stosunków konsularnych [Précis de développement des rapports consulaires. Outline of Consular Relations Development]. *Wojskowy Przegląd Prawniczy* No. 1 pp. 35—47.

JANOWSKI Walery: Międzynarodowa współpraca naukowo-techniczna jako składnik procesów integracyjnych krajów RWPG [La collaboration internationale scientifique et technique en tant que composant du processus d'intégration des pays du CAEM. *International Scientific and Technical Cooperation as an Element of Integration Processes of the CMEA Countries*]. *Acta Universitatis Lodziensis, Nauki Polityczne* No. 44 pp. 57—77, summary in French.

JASKIERNIA Jerzy: Ratyfikacja układu SALT II a rola legislatywy w amerykańskiej polityce zagranicznej [La ratification de l'accord SALT II et le rôle du pouvoir législatif dans la politique étrangère américaine. Ratification of the SALT II Treaty and Role of Legislature in American Foreign Policy]. *Sprawy Międzynarodowe* No. 9 pp. 35—50.

JAWORSKI Marek: The Baltic as the Object of Cooperation of Coastal States. *Studies on International Relations* No. 12 pp. 93—113, English version.

JAWORSKI Marek: Współpraca państw bałtyckich w dziedzinie ratownictwa morskigo na Bałtyku [La collaboration des Etats baltes dans le domaine du sauvetage maritime. Cooperation of the Baltic States in Domain of Salvage in the Baltic Sea]. *Przegląd Zachodnio-Pomorski* No. 2 pp. 65—80.

JAWORSKI Marek: Zagadnienia współpracy państw bałtyckich w zakresie korzystania z Bałtyku [Les problèmes de la collaboration des Etats baltes dans le domaine de l'utilisation de la mer Baltique. Problems concerning the Baltic States Cooperation in Utilization of the Baltic Sea]. *Przegląd Zachodnio-Pomorski* No. 3 pp. 55—65.

KLEPACKI Zbigniew M.: Podstawy prawne funkcjonowania socjalistycznych organizacji ekonomicznych [Les fondements juridiques du fonctionnement des organismes économiques socialistes. Legal Basis for the Functioning of the Socialist Interstate Economic Organizations]. *Sprawy Międzynarodowe* No. 6 pp. 73—80.

KLEPACKI Zbigniew M.: Uchwały organizacji międzynarodowych państw socjalistycznych [Les résolutions des organisations internationales des Etats socialistes. Decisions of Socialist Countries International Organizations]. *Sprawy Międzynarodowe* No. 9 pp. 81—92.

KOLASA Jan: Prawnomiędzynarodowe aspekty ochrony wód Odry przed zanieczyszczeniem [La protection des eaux de l'Oder contre la pollution à la lumière du droit international. Protection of the Oder Waters against Pollution. International Legal Aspects]. *Przegląd Stosunków Międzynarodowych* No. 2 pp. 33—48.

KOLASA Jan: Z zagadnień źródeł prawa międzynarodowego — koncepcja prawa uchwalanego [Les problèmes des sources de droit international — conception de droit adopté. Problems Concerning Sources of International Law — the Adopted Law Concept]. *Acta Universitatis Wratislaviensis, Przegląd Administracji* vol. 11 pp. 45—56, summary in English.

KOPRUCKA Jolanta: Układ podstawowy z 21 grudnia 1972 r. a granica państwowa NRD—RFN [L'accord fondamental du 21 décembre 1972 et la frontière RDA - RFA.

Fundamental Treaty of December 21, 1972 and the Frontier between FGR and DGR]. *Przegląd Zachodni* No. 4 pp. 65—74.

KRANZ Jerzy: Udziały finansowe państw członkowskich w Międzynarodowym Funduszu Walutowym [Les quotes-parts des Etats membres du Fonds monétaire international. Quotas of Member States of the International Monetary Fund]. *Ruch Prawniczy, Ekonomiczny i Socjologiczny* No. 4 pp. 47—65.

KWIATKOWSKA-CZECZOWSKA Barbara: Badania naukowe w świetle prac III Konferencji Prawa Morza [Les recherches scientifiques à la lumière des travaux de la III^e Conférence du droit de la mer. Scientific Research in the Light of the Work of the IIIrd Conference on the Law of the Sea]. *Sprawy Międzynarodowe* No. 6 pp. 133—146.

KWIATKOWSKA-CZECZOWSKA Barbara: Międzynarodowa odpowiedzialność państw za szkody pochodzenia technologicznego i przemysłowego [La responsabilité internationale des Etats pour les dommages de provenance technologique et industrielle. International Liability of States for Technological and Industrial Damages]. *Sprawy Międzynarodowe* No. 10 pp. 107—118.

KWIATKOWSKA CZECZOWSKA Barbara: Morska strefa ekonomiczna [La zone économique maritime. Maritime Economic Zone]. *Przegląd Stosunków Międzynarodowych* No. 6 pp. 17—34.

LEBIECKI Andrzej: Rozważania o istocie sporu międzynarodowego [Réflexions sur la notion de différend international. On the Essence of International Dispute]. *Studia Nauk Politycznych* No. 1 pp. 101—110, summaries in Russian and English.

LICHOCKI Michał: Wybory do Parlamentu Europejskiego [Les élections au Parlement européen. Election for the European Parliament]. *Przegląd Zachodni* No. 4 pp. 142—145.

ŁOSSOWSKI Piotr: Poland's Relations with her Neighbours, 1918—1939—1978. *Polish Western Affairs* No. 2 pp. 274—290, English version.

MACHOWSKI Jacek: Zasada wolności badań naukowych w świetle prawa międzynarodowego [Le principe de liberté de recherche scientifique à la lumière du droit international. Principle of Freedom of Scientific Research in the Light of International Law]. *Studia Filozoficzne* No. 7 pp. 151—165.

MATKOWSKI Zbigniew: Social and Economic Consequences of Armaments and Prospects for Disarmament. *Studies on International Relations* No. 13 pp. 35—56, English version.

MICHALIK Jacek: Rola prawa międzynarodowego w systemie stosunków międzynarodowych [Le rôle du droit international dans le système de rapports internationaux. Role of International Law in the System of International Relations]. *Prace Naukowe Uniwersytetu Śląskiego, Prace z Nauk Społecznych* No. 8 pp. 64—76, summaries in Russian and English.

MICHALIK Jacek: Wybrane zagadnienia prawno-międzynarodowej odpowiedzialności państw (próba definicji) [Les problèmes choisis de la responsabilité des Etats du point de vue de droit international. Essai de définition. Selected Problems of International Legal Liability of States (Attempt at a Definition)]. *Zaranie Śląskie* No. 4 pp. 710—727.

MICHALSKA Anna: Ochrona praw człowieka w ramach Międzynarodowej Organizacji Pracy [Les normes de l'organisation internationale du travail en matière de protection des droits de l'homme. Protection of Human Rights within International Labour Organization]. *Ruch Prawniczy, Ekonomiczny i Socjologiczny* No. 3 pp. 17—44, summary in French.

MOSUR Grzegorz: Spory i konflikty międzynarodowe — prezentacja prób systematyzacji pojęć [Les différends et conflits internationaux — essai de systématisation des notions. International Disputes and Conflicts — Attempts at Notions Systematization]. *Zeszyty Naukowe Akademii Spraw Wewnętrznych* No. 23 pp. 33—50, summaries in Russian, English and German.

MYSZKA Henryk: Założenia przyszłej międzynarodowej konwencji o poszukiwaniu i ratowaniu morskim [Les prémisses de la future convention internationale sur la recherche et le sauvetage maritime. Assumptions of the Future International Convention on Searching and Salvage at Sea]. *Technika i Gospodarka Morska* No. 2 pp. 81—84.

NOSIADEK Grzegorz: Miejsce międzynarodowych organizacji ekonomicznych we współpracy krajów RWPG [La place des organisations économiques internationales dans la coopération des pays du CAEM. The Place of International Economic Organizations in Cooperation between CMEA Countries]. *Sprawy Międzynarodowe* No. 1 pp. 81—90.

NOSIADEK Grzegorz: Międzynarodowe organizacje ekonomiczne krajów RWPG a budżet państw członkowskich [Les organisations économiques internationales des pays du CAEM et le budget des Etats membres. International Economic Organizations of the CMEA Countries and the Budget of the Member-States]. *Finanse* No. 3 pp. 34—42.

NOWAK Mariola: Odpowiedzialność materialna państwowych jednostek gospodarczych RWPG [La responsabilité matérielle des unités économiques d'Etat dans le cadre du CAEM. Material Responsibility of the State Economic Units of the CMEA]. *Acta Universitatis Lodziensis, Nauki Polityczne* No. 44 pp. 79—90, summary in French.

NOWAK Zdzisław: Integracja gospodarcza — nowoczesną formą międzynarodowej współpracy gospodarczej [L'intégration économique — une forme moderne de coopération internationale. Economic Integration — Modern Form of International Economic Cooperation]. *Przegląd Zachodni* No. 5/6 pp. 129—145.

OSIK Albert: Aspekty prawno-organizacyjne międzynarodowej specjalizacji i kooperacji produkcji krajów RWPG [Les aspects juridiques et organisationnels de la spécialisation et coopération internationale en matière de production des pays

du CAEM. Légal and Organizational Aspects of International Specialization and Cooperation in Production of the CMEA Countries]. *Handel Zagraniczny*, special number "30 lat RWPG" pp. 31—34.

PAŁYGA Edward: Stosowanie przymusu i samoobrony zbiorowej w Karcie Organizacji Państw Amerykańskich w świetle odpowiednich wymogów Karty NZ [L'application de la contrainte et de l'autodéfense collective dans la Charte de l'Organisation des Etats américains — à la lumière des exigences de la Charte des Nations Unies. Application of Duress and Collective Self-Defence in the Charter of the Organization of American States in the Light of Requirements of the UN Charter]. *Kapitalizm* No. 4 pp. 103—113.

PANKOWICZ Andrzej: Droga do delegalizacji wojny. (Zarys historyczno-prawny) [Voie menant à la délégalisation de la guerre. Précis historico-juridique. Towards Delegalization of War. Historical and Legal Outline]. *Zeszyty Historyczno-Polityczne Stronnictwa Demokratycznego* No. 2 pp. 47—54.

PAŹDZIÓR Bolesław: Ochrona dzieci w konwencjach Międzynarodowej Organizacji Pracy [La protection des enfants dans les conventions de l'Organisation Internationale du Travail. Protection of Children in the Conventions of International Labour Organization]. *Praca i Zabezpieczenie Społeczne* No. 10 pp. 23—32.

PIONTEK Eugeniusz: Międzynarodowa kontrola przestrzegania Paktów praw człowieka [Le contrôle international de l'observation des pactes des droits de l'homme. International Control of Observation of Covenants on Human Rights]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 47—62.

POLACZEK Stanisław: The New International Economic Order and the CMEA Countries. *Studies on International Relations* No. 13 pp. 57—71, English version.

PTASZEK Jan: Stosunki gospodarcze i naukowo-techniczne RWPG ze światem zewnętrznym [Les rapports économiques, scientifiques et techniques du CAEM avec le monde extérieur. Economic and Scientific-Technical Relations of the CMEA with Abroad]. *Gospodarka Planowa* No. 4 pp. 198—202.

RADECKI Wojciech: Ochrona środowiska naturalnego w prawie konfliktów zbrojnych [La protection de l'environnement en droit des conflits armés. Environmental Protection in the Law of Armed Conflicts]. *Wojskowy Przegląd Prawniczy* No. 4 pp. 414—423.

RESICH Zbigniew: Pakty praw człowieka jako kulminacyjny wyraz ochrony praw człowieka w prawie międzynarodowym [Les pactes des droits de l'homme en tant qu'expression culminante de la protection des droits de l'homme en droit international. Covenants on Human Rights as the Greatest Achievement in Protection of Human Rights in International Law]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 9—16.

RESICH Zbigniew: W obronie praw dzieci i młodzieży [Pour défendre les droits des enfants et de la jeunesse. For the Protection of the Rights of Children and of the Young People]. *Nowe Prawo* No. 12 pp. 9—17.

ROTOCKI Zbigniew: Działania wojny domowej na morzu [La guerre civile sur mer. Civil War in the Sea]. *Acta Universitatis Toruniensis. Folia Iuridica* No. 25 pp. 113—135, summary in English.

RUDKOWSKI Jan: Stosunki międzynarodowe RWPG [Les relations internationales du CAEM. International Relations of the CMEA]. *Sprawy Międzynarodowe* No. 6 pp. 81—94.

RUMMEL-BULSKA Iwona: Użytkowanie rzek na cele nieżeglowne ze szczególnym uwzględnieniem rzeki Odry [L'utilisation des fleuves dans d'autres buts que la navigation (compte tenu particulièrement de l'Oder). Utilization of Rivers for Non-navigational Purposes with Particular Regard to the Oder River]. *Przegląd Stosunków Międzynarodowych* No. 2 pp. 49—66.

RYSIAK Gwido: Akt końcowy KBWE a Międzynarodowe paktów praw człowieka [L'acte final de la Conférence sur la sécurité et la coopération en Europe et les Pactes internationaux des droits de l'homme. Final Act of the CSCE and International Covenants on Human Rights]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 63—80.

RZYMANEK Jerzy: Funkcje doraźnych sił zbrojnych ONZ a władza terytorialna państwa przyjmującego [Les fonctions des Forces d'urgence de l'ONU et le pouvoir territorial de l'Etat d'accueil. Functions of the UN Emergency Armed Forces and the Territorial Authority of the Receiving State]. *Wojskowy Przegląd Prawniczy* No. 2 pp. 158—169.

SADURSKA Romana: Rada Europejska [Le Conseil européen. The European Council]. *Państwo i Prawo* No. 5 pp. 94—104.

SAWICKI Stefan: Dokumenty podróży obowiązujące w międzynarodowym ruchu osobowym [Les documents de voyage exigés dans la circulation internationale des personnes. Travel Documents Required in International Personal Movement]. *Sprawy Międzynarodowe* No. 7/8 pp. 141—154.

SAWICKI Stefan: Prawo państwa do nieprzyjmowania cudzoziemców z określonych przyczyn oraz ich wydalania [Le droit de l'Etat à ne pas recevoir des étrangers (pour des raisons définies) et à les expulser. The Right of States to Non-Admission and Expulsion of Foreigners]. *Przegląd Stosunków Międzynarodowych* No. 3 pp. 19—34.

SECH Bronisław: Problem reprezentacji Chin w Organizacji Narodów Zjednoczonych na tle stosunków chińsko-amerykańskich [Le problème de la représentation de la Chine dans l'Organisation des Nations Unies — compte tenu des rapports sino-américains. Problem of China Representation in the UN in the Light of China—USA Relations]. *Acta Universitatis Lodzensis, Nauki Polityczne* No. 44 pp. 111—127, summary in French.

SKOTARCZYK Teodor: Spory w prawie morza [Différends dans le droit de la mer. Disputes in the Law of the Sea]. *Zeszyty Naukowe Akademii Rolniczej w Szczecinie, Nauki Społeczne* No. 10 pp. 69—78.

SKUBISZEWSKI Krzysztof: Konflikt normy krajowej z międzynarodową [Le conflit de la règle interne avec la règle internationale. A Conflict of Municipal Norm with International Norm]. *Państwo i Prawo* No. 12 pp. 3—15.

SŁAWIK Karol: Z zagadnień współczesnego terroryzmu. (Próba oceny zjawiska) [Les problèmes du terrorisme contemporain. Essai d'appréciation du phénomène. Problems of Contemporary Terrorism. (Attempt at Evaluation of the Phenomenon)]. *Problemy Kryminalistyki* No. 138 pp. 273—290.

SONNENFELD Renata: Obowiązanie umów międzynarodowych w Berlinie Zachodnim w świetle jego statusu prawnego [La force obligatoire des conventions internationales à Berlin Ouest à la lumière de son statut juridique. (—) Application of International Agreements in West Berlin in the Light of Its Legal Status]. *Państwo i Prawo* No. 5 pp. 82—93.

STATE Sovereignty in the World of Today. Discussions. *Studies on International Relations* No. 12 pp. 149—174, English version.

SYMONIDES Janusz: Education of Societies for Peace. *Studies on International Relations* No. 13 pp. 16—34, English version.

SYMONIDES Janusz: „Społeczność międzynarodowa” jako kategoria nauki o stosunkach międzynarodowych [La «communauté internationale» en tant que catégorie de la science sur les rapports internationaux. “International Community” as a Category of the Science of International Relations]. *Przegląd Stosunków Międzynarodowych* No. 5 pp. 7—18.

SYMONIDES Janusz: Problemy wojny i pokoju w tradycji polskiej myśli politycznej [Le problème de la guerre et de la paix dans la tradition de la pensée politique en Pologne. Problems of War and Peace in the tradition of Polish Political Thought]. *Sprawy Międzynarodowe* No. 9 pp. 7—16.

SZAFARZ Renata: Konwencja wiedeńska o sukcesji państw w stosunku do traktatów [La convention de Vienne sur la succession en matière de traités. Vienna Convention on Succession of States in Respect of Treaties]. *Państwo i Prawo* No. 1 pp. 64—75.

SZAFRANEK Janusz: Kontrola Międzynarodowej Agencji Energii Atomowej nad przestrzeganiem układu o nierozprzestrzaniu broni jądrowej [Le contrôle exercé par l'Agence internationale de l'énergie atomique sur l'observation de l'accord sur la non-prolifération des armes nucléaires. Control of the International Atomic Energy Agency on the Observance of the Treaty on Non-Proliferation of Nuclear Weapons]. *Acta Universitatis Lodziensis, Nauki Polityczne* No. 44 pp. 129—143, summary in German.

SZULCZEWSKI Michał: The Concept of the New International Information Order. *Studies on International Relations* No. 13 pp. 107—128, English version.

TOBOLEWSKI Aleksander: Problemy rewizji międzynarodowego prawa lotniczego [Les problèmes de la révision du droit aérien international. Problems of International Air Law Review]. *Sprawy Międzynarodowe* No. 3 pp. 71—78.

TYRANOWSKI Jerzy: Boundary Treaties between Poland and the Two German States and the Problem of State Succession. *Polish Western Affairs* No. 1 pp. 112—132, English version.

WAJDA Stanisław: Klasyfikacja rzek ze stanowiska prawa międzynarodowego [La classification des fleuves et rivières du point de vue du droit international. Classification of Rivers in the Light of International Law]. *Przegląd Stosunków Międzynarodowych* No. 4 pp. 107—119.

WAJDA Stanisław: Prawo wolności żeglugi rzecznej ze stanowiska prawa międzynarodowego [La liberté de la navigation fluviale du point de vue du droit international. Right of Free River Navigation in the Light of International Law]. *Przegląd Stosunków Międzynarodowych* No. 5 pp. 43—36.

WASILKOWSKI Andrzej: Europa Zachodnia w dobie przewartościowań międzynarodowych [L'Europe occidentale à l'époque des transformations internationales. Western Europe in the Age of International Revaluations]. *Sprawy Międzynarodowe* No. 6 pp. 9—22.

WĘGOREK Władysław: Organizacja i wyniki współpracy europejskich krajów RWPG w zakresie ochrony roślin [Organisation et résultats de la coopération des pays européens du CAEM dans le domaine de la protection des végétaux. Organization and Results of the CMEA European Countries Cooperation in the Domain of Plants Protection]. *Nauka Polska* No. 7 pp. 73—81.

WIEWIÓROWSKA Krystyna: Satelitarne elektrownie słoneczne. Problemy prawne [Les centrales d'électricité solaire situées sur des satellites. Problèmes juridiques. Satellite Solar Power Station. Legal Problems]. *Astronautyka* No. 6 pp. 20—21.

Private International Law

BOOKS

BUDZIŃSKI Franciszek: Ekonomiczne implikacje międzynarodowych umów licencyjnych [Les implications économiques des contrats internationaux de licences. Economic implication of International Licence Contracts]. Kraków: Państwowe Wydawnictwo Naukowe Uniwersytet Jagielloński 125 pp., bibliography, summary in English.

CALUS Andrzej: Prawo cywilne i handlowe państw obcych [Le droit civil et commercial des Etats étrangers. Civil and Trade Law of Foreign Countries]. Warszawa: Państwowe Wydawnictwo Ekonomiczne 411 pp., bibliography.

LUDWICZAK Witalis: Międzynarodowe prawo prywatne. Wydanie 3 zmienione [Le droit international privé. 3^e éd. modifiée. Private International Law. Third edition revised]. Warszawa: Państwowe Wydawnictwo Naukowe 260 pp.

NOWAKOWSKI Zygmunt K.: Prawo cywilne i handlowe obrotu międzynarodowego.

Wydanie 2 [Le droit civil et le droit du commerce international 2^e éd. Civil and Trade Law of International Turnover. Second edition]. Poznań: Akademia Ekonomiczna 281 pp.

PROBLEMY prawa przewozowego. Redaktor M. Sośniak [Les problèmes du droit des transports. Réd. M. Sośniak. Problems of Transport Law. Ed. by M. Sośniak]. Katowice: Uniwersytet Śląski 142 pp.

TRANSPORT i spedycja międzynarodowa. Redaktor Tadeusz Szczepaniak. Autor: Ignacy Tarski i inni [Transport et expédition internationale. Auteurs: Ignacy Tarski et autres. Transport and International Forwarding. Author: Ignacy Tarski et al.]. Warszawa: Państwowe Wydawnictwo Ekonomiczne 407 pp., bibliography.

TYNEL Andrzej: Umowy o świadczenie usług technicznych we wspólnym prawie gospodarczym krajów RWPG [Accords portant sur la prestation des services techniques dans la législation économique commune des pays du CAEM. Contracts on Technical Services in Common Economic Law of the CMEA Countries]. Warszawa: Polska Izba Handlu Zagranicznego 139 pp., bibliography.

WIŚNIEWSKI Andrzej: Zwolnienie od odpowiedzialności kontraktowej na podstawie ogólnych warunków dostaw RWPG [L'exemption de la responsabilité contractuelle fondée sur les conditions générales de fourniture du CAEM. Exemption from Contract Liability According to the CMEA General Terms of Delivery]. Warszawa: Polska Izba Handlu Zagranicznego 158 pp., bibliography.

ARTICLES

BRAS Władysław: Odpowiedzialność kolei za szkody wyrządzone podróżnym w ruchu międzynarodowym [La responsabilité des chemins de fer pour les dommages portés aux voyageurs dans la circulation internationale. Railway Liability for Damages Caused to the Passengers in International Transport]. *Ruch Prawniczy, Ekonomiczny i Socjologiczny* No. 1 pp. 57—73, summary in French.

BRONIEWICZ Witold: Jaki wniosek powoduje wszczęcie postępowania dotyczącego wykonalności orzeczeń sądów zagranicznych? [Quelle requête fait ouvrir la procédure d'exécution des jugements des tribunaux étrangers? What Application Opens the Procedure Concerning the Execution of the Foreign Courts Judgements?] *Palestra* No. 8/9 pp. 38—45.

BURZYŃSKI Andrzej: Bezpośrednia działalność gospodarcza w Polsce zagranicznych osób prawnych. Części 1—2 [L'activité économique directe des personnes juridiques et physiques étrangères en Pologne parties: 1—2. Direct Economic Activity in Poland of the Foreign Legal Persons. Parts 1—2]. *Przegląd Ustawodawstwa Gospodarczego* No. 6 pp. 153—159, No. 7 pp. 196—203.

CIEPŁA Helena: Konwencja o dochodzeniu roszczeń alimentacyjnych w praktyce sądów wojewódzkich w latach 1974—1977 [Convention sur la poursuite des prétentions alimentaires dans la pratique des tribunaux de voivodie, années 1974—1977. Convention on Vindication of Alimentation Claims in the Practice of the Province Courts in 1974—1977]. *Problemy Wymiaru Sprawiedliwości* No. 18 pp. 83—99.

ĆISZEWSKI Jan: O warunku wspólnego zamieszkiwania przysposabiającego z przysposabianym przed orzeczeniem przysposobienia [La condition de la co-habitation de l'adoptant avec l'adopté avant l'adoption. On the Condition of Common Domicile of the Adoptive Parent and the Adoptee before the Adoption Decision]. *Problemy Wymiaru Sprawiedliwości* No. 17 pp. 22—28.

CZARNYNOGA Stanisław: Posiadanie w świetle przepisów prawa prywatnego międzynarodowego (art. 24 § 3 ustawy o prawie prywatnym międzynarodowym) [La possession à la lumière des dispositions du droit privé international (art. 24 § 3 de la loi sur le droit privé international). Possession in the Light of Private International Law (Art. 24, para. 3 of the Law on the Private International Law)]. *Nowe Prawo* No. 7/8 pp. 117—123.

DROZD Edward: Kolizyjna problematyka rzeczy w transporcie [*Res in transitu en droit international privé. Res in transitu in International Private Law*]. *Krakowskie Studia Prawnicze* vol. 12 pp. 43—62, summary in French.

GODLEWSKI Jerzy: Systemy prawne i taryfowe w międzynarodowych towarowych przewozach kolejowych [Les systèmes juridiques et les tarifs se rapportant aux transports internationaux des marchandises par chemin de fer. Legal and Tariff Systems in International Goods Transport by Railway]. *Eksploatacja Kolei* No. 11/12 pp. 368—373.

GOLA Alfred: Realizacja spraw spadkowych cudzoziemców w Polsce [Réalisation des affaires successorales des étrangers en Pologne. Realization of Succession Matters of Foreigners in Poland]. *Problemy Wymiaru Sprawiedliwości* No. 17 pp. 16—21.

GÓRSKI Władysław: Uregulowanie prawne ubezpieczeń w obrocie zagranicznym [La réglementation juridique des assurances dans le commerce étranger. Legal Regulation of Insurance in Foreign Trade]. *Przegląd Ustawodawstwa Gospodarczego* No. 6 pp. 160—163.

GÓRSKI Władysław: Z problematyki ubezpieczenia przewozów kontenerowych [Sur les problèmes de l'assurance de transport par containers. Some Problems Concerning Insurance of Container Transport]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawa Przewozowego* No. 1 pp. 66—75, summaries in Russian and French.

HOŁOWIŃSKI Jan T.: Niektóre problemy prawne umowy najmu i leasingu kontenerów w obrocie międzynarodowym [Le contrat de location et de leasing des containers dans le trafic international — problèmes juridiques. Some Legal Problems of the Contract of Renting and Leasing of the Containers in International Turnover]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawa Przewozowego* No. 1 pp. 76—85, summaries in Russian and French.

JAKUBOWSKI Jerzy: Pakty praw człowieka a regulacja problematyki prawa międzynarodowego prywatnego w systemie prawnym PRL [Les Pactes des droits de l'homme et la réglementation des problèmes du droit international privé dans

le système juridique de la RPP. Covenants on Human Rights and Regulation of Private International Law Problems in the Legal System of the Polish People's Republic]. *Przegląd Stosunków Międzynarodowych* No. 1 pp. 17—22.

JAKUBOWSKI Jerzy: Proces harmonizacji prawa o spółkach krajów Europejskiej Wspólnoty Gospodarczej [Le processus d'harmonisation du droit des sociétés des pays de la CEE. Harmonizing Process of the EEC Countries Company Law]. *Prace Naukowe Uniwersytetu Śląskiego, Studia Iuridica Silesiana* No. 5 pp. 38—48, summaries in Russian and French.

JODŁOWSKI Jerzy: Problemy odrębnego unormowania postępowania cywilnego w sprawach z zakresu handlu międzynarodowego. (Część I—III) [Les problèmes de la procédure civile distincte appliquée aux affaires du domaine du commerce international. Parties 1—3. Problems of Separate Regulation of the Civil Procedure Concerning Cases of International Trade. (Parts 1—3). *Przegląd Ustawodawstwa Gospodarczego* No. 3 pp. 64—68; No. 4 pp. 96—101; No. 5 pp. 128—132.

JÓZEPIAK Lechosław: Uwagi w sprawie zakresu stosowania „Regulaminu przewozu przesyłek przez Przedsiębiorstwo Spedycji Krajowej” [Les remarques concernant le champ d'application du Règlement de transport de marchandises par l'Entreprise de spédition intérieure. Some Remarks Concerning the Scope of the Application of the “Rules of the Parcel Transport Carried out by the Domestic Forwarding Enterprise”]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawa Przewozowego* No. 1 pp. 86—105, summaries in Russian and French.

KAMIENIECKI Mieczysław: Wpływ przepisów Traktatu Rzymskiego na uprawnienia wynikające z ochrony własności przemysłowej [L'influence des dispositions du Traité de Rome sur les droits résultant de la protection de la propriété industrielle. Impact of the Rome Treaty Norms on Rights Resulting from Industrial Property Protection]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawne Handlu Zagranicznego* No. 3 pp. 38—52, summaries in Russian and French.

KOLARSKI Albin: Prawne unormowanie terminu dostawy przesyłki towarowej [Les règles juridiques se rapportant au délai de la livraison de la marchandise. Legal Regulation of Delivery Term of a Parcel]. *Eksploatacja Kolei* No. 11/12 pp. 374—378.

KULPA Franciszek: Systematyzacja terminologii i pojęć związanych z międzynarodowymi umowami licencyjnymi [Terminologie et notions liés aux contrats de licence internationaux. Systematization of the Terminology and Notions Connected with the International Licence Contracts]. *Problemy Handlu Zagranicznego* No. 12 pp. 86—111.

KWAŚNIEWSKI Zbigniew: Umowy przewozu i spedycji w realizacji przewozów multimodalnych (kombinowanych) przy użyciu kontenerów [Le contrat de transport et d'expédition dans la réalisation des transports combinés à l'aide des containers. Transport and Forwarding Agreements versus Multimodal (Combined) Transport by Containers]. *Studia Prawnicze* No. 2 pp. 169—190, summaries in Russian and English.

LUNIAK Sławomir: Subsydiarne zastosowanie cywilnego prawa NRD w kwestiach

nie uregulowanych w OWD RWPG 1968/1975 [L'application subsidiaire du droit civil de la RDA pour les questions non réglées par les conditions générales de fourniture du CAEM 1968/1975. Subsidiary Application of the GDR Civil Law in Cases Non-Regulated by the General Terms of Delivery of the CMEA]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawne Handlu Zagranicznego* No. 3 pp. 53—65, summaries in Russian and French.

ŁOPUSKI Jan: Odpowiedzialność za szkody ładunkowe w międzynarodowym przewozie wiązanym z udziałem przewoźnika morskiego [La responsabilité pour les dommages survenus pendant le chargement dans le transport international combiné avec la participation du transporteur maritime. Liability for the Freight Damages in International Combined Transport with the Participation of the Sea Freighter]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawa Przewozowego* No. 1 pp. 23—41, summaries in Russian and English.

ŁOPUSKI Jan: Foreign Sovereign Immunity and Maritime Claims (with Emphasis on the Law and Practice of the United States). *Acta Universitatis Nicolai Copernici* No. 18 pp. 59—80, English version.

MAĆCZYŃSKI Andrzej: Kolizyjna problematyka czynności prawnych na wypadek śmierci (zagadnienia wybrane) [Les actes juridiques à cause de mort en droit international privé. Problèmes choisis. On Conflict of Legal Transaction in Cause of Death. Selected Problems]. *Krakowskie Studia Prawnicze* vol. 12 pp. 63—81, summary in French.

NOSIADEK Elżbieta: Współpraca między spółkami mieszanymi a przedsiębiorstwami krajowymi [La coopération entre les sociétés mixtes et les entreprises polonaises. Cooperation between Mixed Companies and Domestic Enterprises]. *Handel Zagraniczny* No. 1 pp. 23—24.

OLSZEWSKI Roman: Problemy prawne listów gwarancyjnych [Les problèmes juridiques des lettres de garantie. Legal Problems of Warranty Certificate]. *Zeszyty Naukowe Wyższej Szkoły Morskiej w Gdyni* No. 4 pp. 51—76, summaries in Russian, English and German.

PAZDAN Maksymilian: Umowy dziedziczenia w polskim prawie prywatnym międzynarodowym [Les contrats successoraux en droit international privé polonais. Contracts of Succession in Polish Private International Law]. *Prace Naukowe Uniwersytetu Śląskiego, Studia Iuridica Silesiana* No. 5 pp. 151—170, summaries in Russian and French.

PAZDAN Maksymilian: Zagadnienia kolizyjne zwyczajów handlowych [Les problèmes de conflit des coutumes de commerce. Conflict of Laws' Problems of Trade Customs]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Handlu Zagranicznego* No. 3 pp. 66—74, summaries in Russian and French.

PIECHOWSKI Sylwester: Zagadnienie skuteczności wyboru prawa właściwego i forum arbitrażowego przez strony umowy agencyjnej w świetle prawa Stanów Zjednoczonych [Le problème de l'efficacité du choix de la loi applicable et du forum d'arbitrage par les parties du contrat d'agence à la lumière de la législation

des Etats-Unis. Problems Concerning an Efficacy of the Choice of Applicable Law and the Arbitrage Forum by the Parties to the Contract of Agency in the Light of the Law of the United States]. *Przegląd Ustawodawstwa Gospodarczego* No. 12 pp. 307—372.

POPIELA Wojciech: Umowa przewozu ładunków i pasażerów w żegludze promowej [Le contrat de transport des marchandises et des passagers dans la navigation de ferry-boat. Contract of Goods and Passengers Transport in Ferry-boat Navigation]. *Ruch Prawniczy, Ekonomiczny i Socjologiczny* No. 1 pp. 75—91, summary in French.

POPIOLEK Wojciech: Normy prawa prywatnego międzynarodowego w konwencjach o ochronie praw autorskich [Les règles du droit privé international dans les conventions se rapportant à la protection des droits d'auteurs. Private International Law Norms in Copyright Conventions]. *Państwo i Prawo* No. 5 pp. 71—81.

POPIOLEK Wojciech: Zobowiązania z umów w projekcie konwencji Europejskiej Wspólnoty Gospodarczej o prawie właściwym dla zobowiązań umownych i pozauumownych [Les obligations contractuelles dans l'avant-projet de la convention de la Communauté économique européenne sur la loi applicable aux obligations contractuelles et non contractuelles. Contract Obligation in the Draft Convention of the European Economic Community on the Applicable Law for the Contract and Extra-Contract Obligations]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawne Handlu Zagranicznego* No. 3 pp. 133—153, summaries in Russian and French.

RAJSKI Jerzy: Odpowiedzialność cywilna przewoźnika lotniczego za szkody wyrządzone w związku z bezprawnym zawładnięciem samolotem [La responsabilité civile du transporteur aérien pour les dommages causés par la capture illicite d'aéronefs. Civil Liability of the Air Transport Agent for Damages caused in Connection with the Unlawful Seizure of the Air-plane]. *Prace Naukowe Uniwersytetu Śląskiego, Studia Iuridica Silesiana* No. 5 pp. 188—196, summaries in Russian and French.

SKĄPSKI Józef: Die Gleichberechtigung von Mann und Frau im Internationalen Kindschaftsrecht Polens und anderen sozialistischen Staaten]. *Archivum Iuridicum Cracoviense* vol. 12 pp. 85—104, summary in French, German version.

SKĄPSKI Józef: Międzynarodowy charakter umowy sprzedaży [Le caractère international du contrat de vente. International Character of Sale Contract]. *Prace Naukowe Uniwersytetu Śląskiego, Studia Iuridica Silesiana* No. 5 pp. 209—225, summaries in Russian and French.

SOSNIAK Mieczysław: Z problematyki kodyfikacji szczegółowej części międzynarodowego prawa handlowego [Des problèmes de la codification de la partie détaillée du droit international de commerce. Some Problems of the Codification of the Detailed Provisions of International Trade Law]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawne Handlu Zagranicznego* No. 3 pp. 87—103, summaries in Russian and French.

STASZKÓW Michał: Wynalazki mające zdolność patentową w świetle postanowień konwencji o patencie europejskim [Les inventions ayant la capacité de brevet à la lumière de la convention sur le brevet européen. Inventions having Patent Capacity in the Light of the Convention on European Patent]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawa Wynalazczego* No. 4 pp. 49—58, summaries in Russian and German.

STEC Mirosław: Umowa czarteru lotniczego [Le contrat du charter aérien. Air Transportation Charter]. *Państwo i Prawo* No. 6 pp. 81—92.

SWIDERSKI Franciszek: Zaginięcie przesyłki w czasie przewozu [La disparition du colis pendant le transport. Miscarriage of a Parcel in Transport]. *Eksploatacja Kolei* No. 11/12 pp. 383—385.

TEICHMANOWA Eufemia: W sprawie przemian strukturalnych w spedycji międzynarodowej [A propos des transformations dans la structure de l'expédition internationale. On Structural Changes in International Forwarding]. *Handel Zagraniczny* No. 5/6 pp. 31—33.

TOMASZEWSKI Maciej: W sprawie skuteczności w Polsce zagranicznych rozwodów administracyjnych [De l'efficacité en Pologne des divorces administratifs étrangers. On the Validity in Poland of Foreign Administrative Divorces]. *Państwo i Prawo* No. 8/9 pp. 118—128.

TYNEL Andrzej: Kolejne zmiany i uzupełnienia ogólnych warunków dostaw RWPG 1968/1975 [Les modifications et suppléments aux conditions générales de fourniture du CAEM 1968 - 1975. Successive Changes and Supplements of the General Terms of Delivery of the CMEA (1968—1975)]. *Przegląd Ustawodawstwa Gospodarczego* No. 10 pp. 285—288.

TYNEL Andrzej: Umowa z terminem nieprzekraczalnym według OWD RWPG 1968/1975 [Le contrat à terme infranchissable selon les conditions générales de fourniture du CAEM 1968/1975. Contract Admitting No Delay According to the General Terms of Delivery of the CMEA]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawne Handlu Zagranicznego* No. 3 pp. 104—116, summaries in Russian and French.

ZACHARIASIEWICZ Maria A.: Prawo właściwe dla kontraktów giełdowych i kontraktów zawieranych na targach [La loi compétente pour les contrats à la bourse et les contrats conclus aux foires. Applicable Law for the Stock-Exchange Contracts and the Contracts concluded during the Fairs]. *Prace Naukowe Uniwersytetu Śląskiego, Problemy Prawne Handlu Zagranicznego* No. 3 pp. 117—130, summaries in Russian and French.

ZACHARIASIEWICZ Maria: Wpływ nowych tendencji amerykańskiego prawa kolizyjnego na rozwój prawa prywatnego międzynarodowego w Europie (na przykładzie stosunków umownych) [L'influence de nouvelles tendances du droit de conflit américain sur le développement du droit international privé en Europe. (sur l'exemple des relations contractuelles). Impact of New Trends in American Private International Law on European Private International Law (On the

Example of Contract Relations)]. *Prace Naukowe Uniwersytetu Śląskiego. Studia Iuridica Silesiana* No. 5 pp. 269—281, summaries in Russian and French.

ZAWADA Kazimierz: Klauzula porządku publicznego w prawie prywatnym międzynarodowym (na tle orzecznictwa Sądu Najwyższego w sprawach z zakresu prawa rodzinnego i spadkowego) [La clause d'ordre public en droit privé international (compte tenu de la jurisprudence de la Cour Suprême du domaine du droit de la famille et du droit successoral). Public Order Clause in International Private Law (According to the Supreme Court Decisions in the Domain of Family and Succession Law)]. *Nowe Prawo* No. 4 pp. 71—84.

ZAWADA Kazimierz: Klauzula porządku publicznego w międzynarodowym postępowaniu cywilnym (na tle orzecznictwa SN w sprawach z zakresu prawa rodzinnego i spadkowego) [La clause de l'ordre public dans la procédure civile internationale (jurisprudence de la Cour Suprême en matière familiale et successorale). Public Order Clause in International Civil Procedure (the Supreme Court Decisions in the Domain of Family and Succession Law)]. *Nowe Prawo* No. 5 pp. 73—79.

ZIELIŃSKI Adam: Międzynarodowy obrót prawny w sprawach cywilnych i karnych [Les rapports juridiques internationaux en matière civile et pénale. International Legal Turnover in the Sphere of Civil and Penal Matters]. *Nowe Prawo* No. 12 pp. 18—29.

ŻÓŁCIŃSKI Zygmunt: Zmiana umowy przewozu na podstawie SMGS (Sogłašenje o meždunarodnom železnodorožnom gruzovom soobščeenii) [La modification du contrat de transport d'après l'entente internationale sur le transport international des marchandises. The Change of the Transport Contract in Virtue of the Agreement on International Railway Transport of Goods]. *Handel Zagraniczny* No. 5/6 pp. 34—37.

Compiled by Barbara Czeczot-Gawrakowa

ARS POLONA supplies all books and periodicals published in Poland to firms, institutions and private persons. You can order the books through the larger books shops in your country or directly through the Foreign Trade Enterprise ARS POLONA 00-068 Warszawa Krakowskie Przedmieście 7, POB 1001, Poland. When ordering your books directly through ARS POLONA please remit the sum due (in local currency) in accordance with the catalogue price of the books ordered, adding postage costs amounting to 5% for European countries and 10% for overseas countries (minimum postage no less than US \$ 0.50 or equivalent). The sum may be remitted through the local bank.

Payment for the books ordered can be also effected by a bank cheque or International Money Order if it is contrary to local currency regulations.

POLISH YEARBOOK OF INTERNATIONAL LAW

single copies may be purchased from ARS POLONA-RUCH Export-Import Enterprise, 00-068 Warszawa, Krakowskie Przedmieście 7, Poland, or through the following firms abroad:

AUSTRALIA
Contal Co.
Mutual Arcade
266, Flinders Street
Melbourne Vic. 3000

Current Book
Distributors Pty, Ltd.
425, Pitt Street
Sydney, 2000

AUSTRIA
Globus-Vertrieb
ausländischer
Zeitschriften
Höchststadtplatz 3
A-1200 Wien

BELGIUM
Agence et Messageries
de la Presse S.A.
1, rue de la Petite-île
1070 Bruxelles

WEST BERLIN
Helios
Literatur-Vertriebs
GmbH
1 Berlin 52
Eichborndamm 141 - 167

DENMARK
Akademisk Boghandel
Universitetsparken
8000 Aarhus c

Ejnar Munksgaard Ltd
Norregade 6
1165 Kobenhavn K

FINLAND
Akateeminen Kirjakauppa
Oy
Postfach 128
Periodicals Dept.
SF-00101 Helsinki 10
Rautatiekirjakauppa
Kampinkatu 2
Helsinki 10

SPAIN
Libreria Herder
Galle de Balmes, 26
Barcelona 7

JAPAN
Maruzen Co. Ltd.
Foreign Book Dept.
P.O. Box 5050
Tokyo International
100-31

Nauka Ltd.
No. 2-30-19, Minami-Ikebukuro
2-chome
Toshima-ku
Tokyo-171

LIECHTENSTEIN
Kraus Periodicals
A Division
of Kraus-Thomson
Organization Ltd.
94 91 Nendeln

LUXEMBOURG
Messageries Paul Kraus.
5, rue de Hollerich
Caso postale 2022
Luxembourg

MOROCCO
Sochepress
1, Place de Bandoeng
Casablanca B.P. 683.

SWEDEN
AB Nordiska Bokhandeln
Fack
101 10 Stockholm 1

Genossenschaft
SWITZERLAND
Literaturvertrieb
Cramerstr. 2/Ecke
Zweierstr.
8004 Zürich

USA
European Publishers
Representatives, Inc.
11-03 46th Avenue
Long Island City
New York 11101

Ebsco-Franklin Square
Subscription Agency
P.O. Box 1943
Birmingham, Alabama.
35201

2301

INP PAN
P-1045