



## Pipe Smoke and "Ringing Alarm Clocks". The Institute in the Seventies and Eighties

*Torsten Stein*



*Torsten Stein in his office at the institute, 1970s<sup>1</sup>*

### **From Berlin to Heidelberg. How I joined the Institute in 1968**

I first came into contact with the Max Planck Institute for Comparative Public Law and International Law in the winter semester of 1968/69. Originally, I had intended on taking my first state examination at *Freie Universität Berlin*. With the exception of two semesters in Heidelberg, I had studied there for most of my degree. However, the student riots at the time had also reached the Faculty of Law in Berlin, and so I had decided to return to Heidelberg. I did not have to attend a lot of courses anymore, but I was intrigued by an international law seminar by Professor Mosler, the director of the institute at the time. The seminar was, however, not led by Mosler, after all, as he had been appointed as an *ad hoc* judge in the

---

<sup>1</sup> Photo: MPIL.





North Sea Continental Shelf case at the ICJ in The Hague, but instead by Professor Doehring; and it was not held at the faculty, but at the Institute. I was very impressed by the way Professor Doehring conducted the seminar, and so I decided to join his lecture too; probably the only one I have ever attended at eight o'clock in the morning.

I met Professor Doehring again in my oral state examination in June 1970, which he opened by telling the candidates he did not want to hear his (known or assumed) own opinion, but would gladly accept a different one, if it was conclusively justified. I later heard that he had also set one of the exams and I figured that this had probably also been applied in the grading.



*The institute building in the Berliner Straße 1975 (Photo: Max Planck Society (ed.), Berichte und Mitteilungen. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht Heidelberg 2 (1975), p. 9)*

After the oral exam (final result “good” and rank number 3), Professor Doehring came up to me and asked: “What are you doing now?”; I replied: “my legal clerkship [Referendariat]”; Professor Doehring: “Boring”. I stated that I might be doing side work in a law firm, to which he replied: “Why don’t you come to the institute, since you already know it a bit?”. I didn’t have to think twice and was hired as a research assistant (*wissenschaftliche Hilfskraft*) by the new (additional) director, Professor Bernhardt, on 1 September 1970.

## **Via East Frisia to the Japan Department. Lecturer Positions and Country Departments**

In the 1970s and 1980s, the institute was significantly smaller than it is today. At that time, it was still housed in the building in *Berliner Straße* from 1954; the current institute was not built until 1997 and was significantly expanded once again with the extension inaugurated in 2019. While today there are 24 scientific employees and 31 research fellows, back then there were only 21 so-called research fellow positions. Unlike today, however, most of these were full-time positions, with the exception of those who were absolving their legal clerkship at the same time. Once they had passed the second state examination, or at the latest after completing their doctorate, the positions were made permanent. As a result, there were only as many scientific employees as there were posts.

This, in turn, meant that everyone knew each other well and knew what everyone was working on, either on assignment by the directors or on their own projects. Whenever anyone encountered a problem, they went to the relevant researcher and asked for advice, which – as far as possible – was always given.





The research fellows were each assigned a country and an international law topic to observe, which were changed periodically. As it was known from my CV that I was socialised in East Frisia (in North-West Germany) for the first ten years after the war, I was first given the Netherlands, and as I had been trained as a reserve officer between high school and university, the topic of the UN armed forces. Later I got Japan, and when the collection of newly acquired books, which you could order with a note, included one in Japanese, I attached mine to it. After that, the impression that I spoke Japanese persisted in the library for a long time.

The average age of the scientific employees was higher back then than it is today. A few had already completed their habilitation or were about to do so and moved on to department chairs in 1971 (Helmut Steinberger, Christian Tomuschat). Others had already obtained their doctorate and were working on their habilitation or preparing for the admission examination to the Foreign Service.

### ... Editor-In-Chief to Boot

Towards the end of the seventies, I was asked whether I thought I was capable of taking over the editorial department of the Institute. I hesitated a little because I was in the middle of writing my habilitation thesis and realised that this would delay its completion. In the end, however, I accepted because I was promised a C3-equivalent position after completing my habilitation, which otherwise only the director of the library had.

I had already come into contact with the editorial department once, at the very beginning of my work, while compiling the index for a comprehensive comparative law conference volume; later on, only when I had written a book reviews, which the long-standing head of the editorial team, Dr Strebel, often reformulated considerably, until I told him that I had read the book and if he wanted the review to be different, he should read and discuss it himself; that's when that stopped.

The main task of the editorial team was the “*Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*“ (*ZaöRV*; English Title: Heidelberg Journal of International Law, HJIL) published by the Institute, in which articles offered from outside or written in-house were published in four issues per year. If the articles submitted and accepted from outside were not sufficient, a call went out to the staff to check which manuscripts they could contribute from their field of work.

All manuscripts landed on my desk first and I had to read them thoroughly and occasionally double-check them by looking at the (cited) literature. I rejected obviously unsuited offers independently and as politely as possible, unless they came from a very prominent colleague; then I made sure to get the directors' assent. . I once turned down a manuscript, which was mainly focussed on criminal law and criminology, by Professor Heike Jung from Saarland University and wrote to “Frau Professor Jung” to say that the otherwise interesting article would





not be looked for or found in the ZaöRV. Sometime later, when I was giving a presentation as part of an application process in Saarbrücken, a tall, bald man came up to me and said “I am Mrs Jung”. I didn’t realise at the time that Heike is a first name also common for men in Southern Germany. When I later moved to Saarbrücken, we became good friends.



*Presentation of the new Fontes Edition (Sectio 2, national case law): Albert Bleckmann, Kay Hailbronner, Werner Morvay and Torsten Stein, 1970s (Photo: MPIL)*

Contribution I wanted to accept were submitted to the managing director, who mostly agreed. This was not always the case with manuscripts from within the Institute. A few employees were generally viewed critically and their contributions were rejected after a few marginal comments on the first few pages. I would then regularly intervene and say that while some things could certainly be improved, the article was not that bad, you just had to read it to the end.

I would not have been able to complete my habilitation in a reasonable amount of time without the help of the very experienced and capable women in the editorial team: Mrs Makarov, Mrs Neureither, and later also Mrs Schmidt.

I have retained one “defect” from those days of thorough reading: I spot almost every spelling mistake or typo in books and newspapers.

## **Working with the Sources. Fontes Iuris Gentium**

According to Art. 38 para. 1 d) of the Statute of the ICJ, judicial decisions from different nations, among other things, serve as subsidiary means for the determination of international legal norms. A small working group (five to six staffers) headed by Professor Doehring had set out to analyse the case law of the German upper and federal courts (and in exceptional cases also of the lower courts) to determine whether and to what extent it could function as such an aid. The task was quite labour-intensive: First, the official collections of decisions, which were often published with a delay, and the specialist journals were examined to see whether they contained relevant decisions, which were then copied. The working group divided this up among themselves and subsequently met to discuss whether and which guiding principles (*Leitsätze*) should be extracted from them, organised materially and finally published, citing the relevant source, in lavishly printed, thick volumes, much later. The debates often dragged on for a long time, as one insight was that a considerable portion of the statements made by German courts on international law were simply wrong. This suggested that the categorisation of international law as a mere elective subject in legal education was (and is) insufficient. As the sales of these thick volumes did not match the effort required to produce them, the project was discontinued in the 1980s.





## “Coffee House Culture” in Heidelberg. Café Frauenfeld



*The café circle: Albert Bleckmann, Torsten Stein, Werner Morvay and Hartmut Schiedermaier (Photo: MPIL)*

Every weekday at 10 a.m., a small group (Albert Bleckmann, Werner Morvay, Georg Ress, Hartmut Schiedermaier – I was adopted by them) set off for the nearby *Café Frauenfeld* in *Mönchhofstraße* (near the institute, in Heidelberg-Neuenheim, today a bank is located there). There, over a coffee or two, we discussed our respective scientific projects and often broader political issues as well. A special topic was always Werner Morvay’s dissertation. He was highly intelligent, very well-read, and knowledgeable but very critical of himself and moody. On multiple occasions, when asked about his work, he replied that he had torn everything up as it did not meet his standards yet. His topic was the decolonisation of the Commonwealth.<sup>2</sup> We then asked him to give us a copy of what he had recently put down on paper so that we could get an idea. Finally, we were in possession of the complete manuscript, despite him having torn things up again. In the

end, he submitted it under our supervision and was awarded his doctorate from the Heidelberg faculty of law; if I remember correctly: *summa cum laude*. This shows, beyond mere collegiality, the special camaraderie that prevailed, not between all, but nevertheless between some.

### The Referentenbesprechung and Beyond

Every Monday from 4 to 6 p.m., it was time for the *Referentenbesprechung*, which was renamed Monday Meeting (*Montagsrunde*) in 2022. Attendance was an unwritten requirement. It was used for newsworthy announcements from the speakers’ specialist and country departments. Topics from their own projects or guest lectures were the rare exception. This meant that everyone was informed about developments in the other departments. The duration of each presentation was limited to 15 minutes so that as many people as possible could have their turn. Those who clearly exceeded their time were inconspicuously handed a drawing of a “fiercely ringing alarm clock”, which in the vast majority of cases led to short closing remarks. After Professor Frowein joined the institute as a director in 1981, the “alarm clock” became superfluous. If someone took too long, he would tap his signet ring silently but unmistakably.

---

<sup>2</sup> Published in 1974 in the “*Schwarze Reihe*“: Werner Morvay, *Souveränitätsübergang und Rechtskontinuität im Britischen Commonwealth. Ein Beitrag zur Lehre von der Staatensukzession*, Heidelberg: Springer 1974.



# MPIL 100



For a long time, smoking was allowed during the *Referentenbesprechung*. The pipe smokers were at the forefront: Michael Bothe, Karl Doehring, Helmut Steinberger and also myself. When this was abolished, the air was different, but not necessarily better.

After the meeting, many, but not all, attendees went to a restaurant in Handschuhsheim, sometimes the “*Alt Hendesse*“, sometimes the “*Lamm*“, and intensively discussed one or the other of the afternoon’s contributions or other current international law issues over beer or wine and something to eat. Professor Mosler was never there, Professor Doehring always, Professor Bernhardt often and Professor Frowein from time to time. These “after-sessions” contributed significantly to the sense of cohesion. Unfortunately, they increasingly fell out of fashion in the late 1980s.

What was different back then? Due to its smaller size and the commitment of its members, the Institute was much like a scientific family.

*Translation from the German original: Sarah Gebel*

