A TREATISE FOR INTERNATIONAL ADMINISTRATIVE LAW

Jakub Handrlica*[1]

Abstract: *This article argues, international administrative law represents a special (sub)discipline, which governs relations with certain foreign element. While having some similarities with both international public law and international private law, international administrative law represents an integral part of (municipal) administrative law. This article aims to provide for a theoretical outline of this special, but half-forgotten (sub)discipline of administrative law. In order to do so, international administrative law is being delimited both vis-á-vis international public law and international private law and subsequently, outline of the structure of international administrative law is being presented. In this concern, this article argues, that despite tendencies to internationalisation, international administrative law still represents a national project, being characterised by certain degree of isolationism and autonomy.*

Keywords: *international administrative law; delimiting law; delimiting norms; foreign elements; isolationism*

INTRODUCTION[2]

"International administrative law is a newly emerging field of international private law." With this - rather innovative – thesis, Karl Neumeyer approached to the Scientific Council of the Ludwig-Maximilian University of Munich in 1901, in order to get his *venia legendi*[3] in international private law.[4] Neumeyer claimed, that in parallel to the choice-of-law rules of international private law, another structure of rules exists, governing relations of administrative law, in which certain foreign element occurs. Under his understanding, this structure of rules constitutes a particular (sub)discipline of (municipal) administrative law – international administrative law. Three decades later, Neumeyer observed[5] bitterly in the introduction to the fourth volume of his *Internationales Verwaltungsrecht,* that his thesis on international administrative law as a special (sub)discipline did not attracted any particular attention by the members of the Scientific Council. Looking at the subject in retro-

* Associate Professor JUDr. Jakub Handrlica, Ph.D., Department of Administrative Law and Administrative Science, Faculty of Law, Charles University in Prague, Czech Republic

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[2] This is a written and expanded version of my lecture entitled "Two faces of international administrative law", which was delivered at the Department of Law, University of Naples "Federico II", Italy.

[3] *Venia legendi* (ie. the right to teach) is an authorisation to independently hold lectures in a certain subject, obtained by successful completion of a post-doctoral lecturing qualification (habilitation). This right has been regularly accompanied by the title "Privatdozent".

[4] See VON BREITENBUCH, H. *Karl Neumeyer – Leben und Werk (1869–1941)*. Berlin: Peter Lang, 2013, pp. 56 et seqq. In fact, Neumeyer was referring to two other scholars of public law – Ernst Isay and Fritz Stier-Somlo. See ISAY, E. Internationales Verwaltungsrecht. In: STIER-SOMLO, F., ELSTER, A. (eds), *Handwörterbuch der Rechtswissenschaft. Bd. 3*. Berlin: De Gruyter Recht, 1928, pp. 344 et seqq. and STIER-SOMLO, F. Grundprobleme des internationalen Verwaltungsrechts. *Internationale Zeitschrift für Theorie des Rechts.* 1930/1931, Vol. 5, No. 5, pp. 222 et seqq.

[5] NEUMEYER, K. *Internationales Verwaltungsrecht. Allgemeniner Teil.* Zürich: Verlag für Recht und Gesellschaft AG, 1936, p. III.

spective way, this observation can be considered as very significant. Indeed, international administrative law has never gained the position and prestige of its most famous *doppelgänger* – international private law. On contrary, since Neumeyers pioneering works, international administrative law became only very *rarely* subject of a systematic academic attention.[6] And consequently, more than one hundred years after Neumeyer presented his thesis on existence of an international administrative law, the understanding of this field still represents – to certain degree – an *enigma*. While some current authors[7] do recognise it as an autonomous field of its own, others[8] consider international administrative law to represent more an emerging field, than an established (sub)discipline of public law.

This aims to argue, that international administrative law represents an autonomous (sub)discipline of (municipal) administrative law. This (sub)discipline governs relations of administrative law with certain foreign element. However, rather than constituting a coherent branch of substantive law, international administrative law is comprised of a set of norms, which are provided among the substantive law (such as tax law, social security law, university law, traffic law, police law, immigration law, natural resources law, confessional law etc.).

Further, this article argues, that despite certain attempts for internationalisation of rules, international administrative law still represents a national project.[9] So, certain de-

[6] See FRAGOLA, U. *Diritto amministrativo internazionale: Manuali di szienze guiridiche ed economiche*. Napoli: Pallerano & Del Gaudio, 1951, WEIL, P. *Le droit administratif international: bilan et tendences*. Paris: Institut des hautes études internationales, 1962; BISCOTTINI, G. *Diritto amministrativo internazionale. La rilevanza degli atti amministrativi stranieri*. Padova: Antonio Milani, 1964, VOGEL, K. *Der räumliche Anwendungsbereich der Verwaltungsrechtsnorm. Eine Untersuchung über die Grundfragen des sog. Internationalen Verwaltungs- und Steuerrechts*. Hamburg: Alfred Metzner, 1965, BISCOTTINI, G. *Diritto amministrativo internazionale. La circolazione degli uomini e delle cose*. Padova: Antonio Milani, 1966, HOFFMANN, G. Internationales Verwaltungsrecht. In: MÜNCH, I. (ed.). *Besonderes Verwaltungsrecht*. Berlin: De Gruyter, 1985, pp. 851 et seqq. (the latter represents a rare example of the subject being addressed in a university textbook on).

[7] See FLEINER-GERSTER, T. *Grundzüge des allgemeinen und schweitzerischen Verwaltungsrecht*. 2nd ed., Zürich: Schulthess, 1980, sub § 10 ("In fact, we can today refer about international administrative law as about an independent discipline"), LINKE, C. *Europäisches Internationales Verwaltungsrecht*. Berlin: Peter Lang, 2001 (arguing for existence of a special regional régime of international administrative law), OEHLER, C. *Kollissionsordnung des Allgemeinen Verwaltungsrechts*. Tübingen: Mohr Siebeck, 2005, pp. 12 et seqq. (arguing for existence of an international administrative law as a régime of choice-of-law in public law), MÖLLERS, C., VOSSKUHLE, A., WALTER, C. (eds), *Internationales Verwaltungsrecht*. Tübingen: Mohr Siebeck, 2007, BREINING-KAUFMANN, C. Internationales Verwaltungsrecht. *Zeitschrift für schweitzerisches Recht*. 2006, Vol. 125, No. 1, p. 72 ("international administrative law represents a legal discipline *sui generis*"), MENZEL, J. *Internationales Öffentliches Recht*. Tübingen: Mohr Siebeck, 2011, p. 18 (here, the author argues for existence of a much broader field of law, referred to as *internationales öffentliches Recht* – i.e. choice-of-law in public law).

[8] See VON BAR, L. Internationales Verwaltungsrecht. In: KOHLER, J. (ed). *Enzyklopädie der Rechtswissenschaft. Bd. 2.* München: Duncker & Humblot, 1914, pp. 278 et seqq. (a very early critique regarding the existence of international administrative law as a parallel to international private law), MATSCHER, F. Gibt es ein internationales Verwaltungsrecht? In: Otto Sandrock (ed). *Festschrift für Günther Beitzke*. Berlin: De Gruyter, 1979, pp. 641 et seqq. (a very classical piece of literature, which aims to question the existence of an international administrative law as an autonomous (sub)discipline), TERHECHTE, J., MÖLLERS, C. Europäisches Verwaltungsrecht und Internationales Verwaltungsrecht. In: TERHECHTE, J. (ed), *Verwaltungsrecht der Europäischen Union*. Baden-Baden: Nomos Verlag, 2019, pp. 1444 et seqq. (here, the authors argue, that international administrative law cannot be considered as an established field of law, because it merely represents an emerging field of research).

[9] Accord in POTOČNÝ, M. Výklad českého mezinárodního práva správního. In: *Veřejná správa a právo. Pocta Dušanu Hendrychovi k 70. narozeninám*. Praha: C. H. Beck, 1997, pp. 213 et seqq.

gree of isolationism and autonomy represents a characteristic feature of this particular (sub)discipline of administrative law. Thus, rather than speaking about universal international administrative law, we are facing existence of (national) international administrative law of various States. Consequently, rather than speaking about "international administrative law", we should refer to *internationales Verwaltungsrecht, droit administratif international, dirrito amministrative internazionale, derecho administrative internacional* etc.

I. TERMINOLOGICAL CLARIFICATION

Before dealing with the place of international administrative law in the system of law, the subject of this article deserves certain terminological clarification. The term "international administrative law" itself is – to certain extent – ambiguous, as it can refer to considerably different areas of law.[10]

In fact, these terminological concerns were addressed already in 1906 by Donato Donati.[11] It was Donati, who proposed a more elaborated classification of the subject. On one hand, he defined *diritto internazionale amministrativo*, as what he understood to be a special branch of international public law. Under this understanding, *diritto internazionale amministrativo* was governing the international relations between sovereign States in the area of administration. The terminology, as proposed by Donati, was subsequently widely reflected in legal scholarship.[12] Consequently, this path of scholarship later constituted grounds for systematic research in the area of the law of international organisations.

For the premise of this article, it is important that, in parallel to *diritto internazionale amministrativo*, Donati argued for the existence of a special branch of administrative law (*diritto amministrativo internazionale*) governing administrative relations with certain foreign elements.[13] This special branch was understood to represent a parallel with international private law. While international private law emerged as set of norms, providing for rules governing private relations with certain foreign aspect, the *diritto amministrativo*

[10] For a very detailed overview of various approaches to international administrative law, see MENZEL, J. *Internationales Öffentliches Recht.* pp. 43 et seqq.

[11] See DONATI, D. *I trattati internazionali nel diritto constituzionale.* Torino: Unione tipografico-editrice torinese, 1906, pp. 20 et seqq. The distinction between *diritto internazionale amministrativo* and *diritto amministrativo internazionale*, as presented by Donati, was later widely reflected in the scholarship of public law. See eg. BORSI, U. Carattere e oggetto del diritto amministrativo internazionale. *Rivista di diritto internazionale.* 1912, Vol. 2, No. 2, pp. 352 et seqq. and GASCÓN Y MARIN, J. Les transformations du droit administratif international. *Recueil des cours de l Académie de droit international de La Haye.* 1930, Vol. 8, pp. 1 et seqq.

[12] GEMMA, S. *Prime line di un diritto internazionale amministrativo.* Firenze: Seeber, 1902, NÉGULESCO, P. Principes du droit international administratif. *Recueil des cours de l Académie de droit international de La Haye.* 1935, Vol. 13, pp. 579–691, RAPISARDI MIRBELLI, A. *Diritto internazionale amministrativo.* Milano: Antonio Milani, 1939.

[13] In this respect, Donati was referring to a thesis, as presented earlier by Prospero Fedozzi in his study *Il diritto amministrativo internazionale (nozioni sistematiche)*. Perugia: Unione tipografica cooperativa, 1901, pp. 12–13. However, in strict contrast to Donati, Fedozzi did not provided for a clear terminological distinction between norms belonging to the realm of international public law on one hand and those, belonging to the (municipal) administrative law on the other.

internazionale referred to similar norms, existing in the area of administrative law. This terminological proposal also gained certain reflection in legal scholarship.[14]

The fact is, that the English language does not contain specific terms capable of reflecting the distinction between *diritto internazionale amministrativo* and *diritto amministrativo internazionale*. Consequently, the term *international administrative law* has been used[15] in literature *promiscue* for both mentioned areas. We are facing the same problem with the term *internationales Verwaltungsrecht* in the scholarship of the German-speaking countries.[16] While a distinction between *international administrative law* and *administrative international law* was proposed,[17] the latter term has never gained wider recognition in legal academy.

More recently, using of the term *international administrative law* for a special (sub)discipline of (municipal) administrative law became a subject of renewed criticism. Here, Eberhardt Schmidt-Aßmann argued, that "administrative law scholarship should abandon the inaccurate parallel (to international private law) and radically reorder the formation of terminology. International administrative law is to be understood *as the administrative law originating under international law* (emphasis added). It involves processes of reshaping national law and reconstructing international law; these processes resemble Europeanization in their structures (but not in their mechanisms)."[18] Here, the author further proposed three main functional circles for the newly defined international administrative law: "it is a body of law governing international administrative institutions, a body of law determinative of national administrative legal orders, and a body of law on cooperative handling of specific associative problems."[19]

Reflecting the arguments presented by Schmidt-Aßmann, one may agree with the fact, the parallel between international private law and international administrative law has certain weaknesses, as both fields of law do serve rather different purpose.[20] International

[14] D ALESSIO, J. Il diritto amministrativo internazionale e sue fonti. *Rivista di diritto pubblico*. 1913, Vol. 10, No. 1, pp. 276 et seqq., WEIL, P. *Le droit administratif international: bilan et tendences*. Paris: Institut des hautes études internationales, 1962, BISCOTTINI, G. *Diritto amministrativo internazionale. La rilevanza degli atti amministrativi stranieri*. Padova: Antonio Milani, 1964.

[15] REINSCH, P. International Administrative Law and National Sovereignty. *American Journal of International Law*. 1909, Vol. 3, No. 1, pp. 1 et seqq., REINSCH, P. *Public International Unions: Their Work and Organization. A Study in International Administrative Law*. Boston : Ginn & Company, 1911, FREEMAN, H. International Administrative Law: A Functional Approach to Peace. *Yale Law Journal*. 1948, Vol. 57, No. 6, pp. 976 et seqq., CARLSTON, K. International Administrative Law: A Venture in Legal Theory. *Journal of Public Law*. 1959, Vol. 8, No. 2, pp. 329 et seqq., KINNEY, E. The Emerging Field of International Administrative Law: Its Content and Potential. *Administrative Law Review*. 2002, Vol. 54, No. 1, pp. 415 et seqq.

[16] BIAGGINI, G. Die Entwicklung eines internationalen Verwaltungsrechts als Aufgabe der Rechtswissenschaft. In: HILLGRUBER, C., VOLKMANN, U., NOLTE, G., POSCHER, R. (eds), Die Leistungsfähigkeit der Wissenschaft des Öffentlichen Rechts. Berlin: De Gruyter, 2007, pp. 413 et seqq. (here, the author deals with *internationales Verwaltungsrecht* from both perspective of (municipal) administrative law and international public law).

[17] RUFFERT, M., STEINECKE, S. *The Global Administrative Law of Science*. Heidelberg: Springer, 2011, pp. 21 et seqq.

[18] SCHMIDT-ASSMANN, E. The Internationalization of Administrative Relations as a Challenge for Administrative Law Scholarship. *German Law Journal*. 2008, Vol. 9, No. 11, p. 2077.

[19] Ibid.

[20] In fact, the original thesis of Neumeyer on international administrative law being a subdiscipline of international private law gained very little reception in legal scholarship. See eg. VALLINDAS, P. *Introduction au droit international privé lato sensu*. Athens: N. A. Saccoulas, 1943, pp. 509 et seqq.

private law follows an equality of various regimes of private law and provides for those regime, which is applicable to the respective situation. In strict contrast, there is no place for equality of various regimes of administrative law under the scheme of international administrative law, which strictly follows the concept of unity of the *forum* and the *law*.[21] However, one cannot agree with the thesis of Schmidt-Aßmann on non-existence of international administrative law as an autonomous (sub)discipline of (municipal) administrative law. The fact, international public law provides for certain rules on cooperation in administrative matters does not imply necessary that *all* such rules are product of international agreements, or of other sources of international public law (for further details see the section III.3.).[22]

Consequently, despite obvious ambiguity of the term, this article will use the term *international administrative law* in order to refer to those part of (municipal) administrative law, which governs administrative relations with certain foreign element. Despite the above-mentioned weaknesses of this terminology, the term seems to be currently widely accepted as an umbrella term, referring to various national regimes – i.e. to the German international administrative law (*internationales Verwaltungsrecht*), French international administrative law (*droit administratif international*), Italian international administrative law (*dirrito amministrative internazionale*), Czech international administrative law (*mezinárodní právo správní*) etc.

II. INTERNATIONAL ADMINISTRATIVE LAW IN THE SYSTEM OF LAW

Before dealing with the objective and norms of international administrative law, this section aims to sketch out the position of this special (sub)discipline of administrative law in the system of law. Firstly, the subject will be defined in a negative way. Thus, relation of international administrative law to two related, yet different areas of law –international public law and international private law – will be analysed and the main differences will be identified. Secondly, international administrative as a delimiting law – a special (sub)discipline of domestic administrative law – will be outlined.

1. International administrative law and international public law

A delimitation between international administrative law and international public law may serve as an introduction to this section. This delimitation is being made with respect to a dualistic model of relations between international public law and municipal law.[23] Under a dualistic model, international administrative law on one hand and international

[21] GROF, A. Zum "internationalen Verwaltungsrecht". *Juristische Blätter*. 1986, Vol. 108, No. 2, p. 213.

[22] Accord in CLASSEN, G. Die Entwicklung eines internationalen Verwaltungsrechts als Aufgabe der Rechtswissenschaft. In: HILLGRUBER, C., VOLKMANN, U., NOLTE, G., POSCHER, R. (eds), Die Leistungsfähigkeit der Wissenschaft des Öffentlichen Rechts. Berlin: De Gruyter, 2007, pp. 392 et seqq.

[23] For a rather rare analysis of the concept of international administrative law in a monistic model of relation between international public law and municipal law, see TIETJE, C. *Die Internationalität des Verwaltungshandelns*. Berlin: Duncker & Humblot, 2001, pp. 98 et seqq.

public law on the other, do represent two different legal frameworks.[24] While international administrative law (as an integral part of administrative law) governs relations between a citizen and the State, international public law governs mutual relations between sovereign States. Thus, the term "international" (in international administrative law) refers *exclusively* to the fact, this (sub)discipline of administrative law addresses relations where certain foreign (i.e. "international") element appears.[25] This term is not referring to any international relations between the sovereign States, or any other subjects of international public law.

At the same time, international administrative law is following the principle of the sovereign equality of the States, as provided by international public law.[26] This principle provides that it is up to the sovereign State to decide to which extent it will exclusively use its jurisdiction to apply its own administrative law and to execute them within its own territory. Thus, the principle of sovereign equality of the States has been reflected in the concept of unity of the *forum* and the *law* in international administrative law. Under this concept, only a norm of international administrative (a "delimiting norm") can provide any legal effects of any foreign administrative measures *vis-á-vis* subjects of the concerned State.

Further, there is another important link between the two field of law. The norms of international administrative law can reflect obligations of the States that arise from international public law. In the legal frameworks, which follow dualistic model of mutual relation between the international public law and the domestic law, the delimiting norms frequently react upon obligations arising from international agreements. The principle of the sovereign equality of the States implies that a delimiting norm can never cause any legal effect *vis-á-vis* a foreign legal framework – a feature, which has been referred to as "unilaterality of delimiting norms".[27] Consequently, it is always the delimiting norm of the (municipal) international administrative law that provides for effects of foreign driving licence, pilot licence, university diploma etc.[28] Further, a delimiting norm can also reflect

[24] VERDROSS, A. *Völkerrecht*. Vienna: Springer, 1959, pp. 377 et seqq., MENZEL, E. *Völkerrecht*. München: C. H. Beck, 1962, pp. 5 et seqq., GRAF WITZTHUM, W. Begriff, Geschichte und Rechtsquellen des Völkerrechts. In: GRAF WITZTHUM, W. (ed), *Völkerrecht*. 4th ed., Berlin: De Gruyter, 2007, pp. 21 et seqq.

[25] Eg. a foreign driving licence, foreign university diploma, foreign passport, foreign licence of a ship captain, or of a airplane pilot etc.

[26] NEUMEYER, K. Internationales Verwaltungsrecht: Völkerrechtliche Grundlage. In STRUPP, K. (ed). *Wörterbuch des Völkerrechts und der Diplomatie*. Berlin: Walter de Gruyter & Co., 1924, pp. 577 et seqq.

[27] SIEHR, K. Ausländische Eingriffsnormen im inländischen Wirtschaftskollisionsrecht. *Rabels Zeitschrift für ausländisches und internationales Privatrecht*. 1988, Vol. 52, pp. 41 et seqq., SCHNYDER, A. *Wirtschaftskollisionsrecht: Sonderanknüpfung und extraterritoriale Anwendung wirtschaftsrechtlicher Normen unter Berücksichtigung von Marktrecht*. Zürich: Schulthess, 1990, pp. 45 et seqq., NIEDOBITEK, M. *Das Recht der grenzüberschreitenden Verträge*. Tübingen: Mohr Siebeck, 2001, pp. 366 et seqq., SIEMS, M. Die Harmonisierung des Internationalen Deliktsrechts und die „Einheit der Rechtsordnung". *Recht der internationalen Wirtschaft*. 2004, Vol. 9, No. 5, pp. 662 et seqq., DUTTA, A. *Durchsetzung öffentlichrechtlicher Forderungen ausländischer Staaten durch deutsche Gerichte*. Tübingen: Mohr Siebeck, 2006, pp. 399 et seqq. Critical appraisal of the concept of „unilaterality" was provided by OEHLER, C. *Kollissionsordnung des Allgemeinen Verwaltungsrechts*. pp. 33 et seqq. and more recently by HEMLER, A. *Die Methodik der „Eingriffsnorm" im modernen Kollisionsrecht*. Tübingen: Mohr Siebeck, 2019, pp. 63 et seqq.

[28] WENANDER, H. Recognition of Foreign Administrative Decisions. *Heidelberg Journal of International Law*. 2011, Vol. 71, pp. 762 et seqq. (here, the author gives several examples of international agreements, providing for obligation to recognise a foreign administrative act).

a *custom* as a source of international public law. Thus, the classical approach to international administrative law has always recognised that a source of international public law can represent the origin of a certain delimiting norm.[29] This is the case of those administrative acts, granting a citizenship.

Consequently, in a dualistic model, international public law and international administrative law do represent two different, albeit strongly linked field of law. They do govern two different fields of relations.[30] Despite strong mutual links, international administrative law, us understood in this article, cannot be considered a part of international public law.

2. International administrative law and international private law

Since Neumeyer, international administrative law has been understood as a kind of *a parallel* of international private law in legal scholarship.[31] However, certain important differences were also identified between these two branches of law, leading to the thesis on "emancipation of international administrative law from the realm of international private law".[32]

Firstly, under international private law, the legal frameworks governing relations of private law in various States are understood as being normatively equal.[33] Consequently, States allow for application of foreign private law in those cases where a foreign element is involved. On contrary, under administrative law, such equality is basically not recognised.[34] Administrative law, as a matter of principle exclusively recognises its own rules as applicable in administrative relations and these rules are to be applied by the competent administrative authorities of the concerned State. There is no place for any equality of domestic and foreign administrative law under this concept.[35] Consequently, a concept of unity of the *forum* and the *law* is strictly followed in administrative law. Thus, in contrast to the conflict-of-law rules of international private law, the delimiting norms of the international administrative law are not decisive for answering the question of applicable law (the domestic one, or the foreign one).[36] They merely unilaterally limit the application of (municipal) administrative law in those cases, where a foreign element is involved in the relations of administrative law.

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[29] NGUYEN, M. Droit administratif international. *Zeitschrift für schweitzerisches Recht*. 2006, Vol. 125, No. 1, pp. 77 et seqq.

[30] MENZEL, J. *Internationales Öffentliches Recht*. pp. 18 et seqq.

[31] NEUHAUS, P. *Die Grundbegriffe des internationalen Privatrechts*. Tübingen: J. C. B. Mohr, 1976, pp. 5 et seqq.

[32] ZWEIGERT, K. Aussprache. In: *Fünfzig Jahre Institut für Internationales Recht an der Universität Kiel*. Hamburg: Hansischer Gildenverlag, 1964, p. 141.

[33] See MILLS, A. Connecting Public and Private International Law. In: RUIZ ABOU-NIGM, V., MCCALL-SMITH, K., FRENCH, D. (eds). *Linkages and Boundaries in Private and Public International Law*. Oxford: Hart Publishing, 2018, pp. 12 et seqq.

[34] VOGEL, K. Administrative Law: International Aspects. In: Bernhardt, R. (ed) *Encyclopedia of Public International Law, 9 – International Relations and Legal Co-operation in General*. Amsterdam: North Holland, 1986, pp. 2 et seqq.

[35] VOGEL, K. Qualifikationsfragen in Internationalen Verwaltungsrecht. *Archiv des öffentlichen Rechts*. 1959, Vol. 84, No. 1, pp. 58 et seqq.

[36] STEINDORFF, E. Internationales Verwaltungsrecht. In: STRUPP, K., SCHLOCHAUER, H. (eds). *Wörterbuch des Völkerrechts*. Berlin: De Gruyter, 1962, p. 581.

Further, in the area of international private law, the conflict-of-law rules became subject of frequent codification by national legislators. This is not the case of the delimiting rules of international administrative law.[37] These are regularly embodied in the sources of substantive law, such as tax law, social security law, university law, traffic law, police law, immigration law, natural resources law, confessional law etc. Thus, this difference between international private law and international administrative law certainly caused difficulties in coherent research of the later subject and to a rise in prominence of the first one.[38]

3. International administrative law and (municipal) administrative law

"What is presented as international administrative law, or something similar, is just a juristic delusion."[39] In this way, Neumeyer described the position of international administrative law in the realm of (municipal) administrative law. Rather than constituting a coherent branch of substantive law, international administrative law is comprised of a set of delimiting norms, which are provided among the substantive law (such as tax law, social security law, university law, traffic law, police law, immigration law, natural resources law, confessional law etc.). Delimiting norms are also more closely connected to the structure and policies of the substantive law in question. In this respect, Klaus Vogel argued that it would be impossible to a large extent to treat these provisions separately from substantive law, since they fail to constitute a province of law of their own.[40]

In this context, the scholarship also frequently refers to special subdisciplines of administrative law, which aim at addressing relations with a foreign element.[41] This is the case of international tax law, international social security law and international environmental law.[42] This disintegrated and unharmonized nature of international administrative law has certainly contributed to a certain marginalisation of the legal research in this area.

At the same time, the traditional understanding in the discussed field was based on a consideration that there are *isolated* structures of international administrative law in each of the sovereign States. Consequently, one can argue that under its very traditional understanding, international administrative law is a typical *national project*.[43] At this point, we find a very common characteristic feature with the international private law, which has – despite certain attempts for its internationalisation – also to a large extent emerged into a national project. In this respect, Gerhard Kegel argued that when we speak about international private law, or international administrative law, we do not refer to

[37] VOGEL, K. Administrative Law: International Aspects. pp. 4 et seqq.
[38] MENZEL, J. *Internationales Öffentliches Recht.* pp. 21 et seqq.
[39] NEUMEYER, K. Vom Recht der Auswärtigen Verwaltung und verwandten Rechtsbegriffen. *Archiv des öffentlichen Rechts.* 1913, Vol. 31, p. 129.
[40] VOGEL, K. Administrative Law: International Aspects. p. 5.
[41] BIAGGINI, G. Die Entwicklung eines internationalen Verwaltungsrechts. p. 414 (with several other examples in footnote 8).
[42] REIMER, E. Transnationales Steuerrecht (for the area of international taxt law), GLASER, M. Internationales Sozialverwaltungsrecht (for the area of international social security law) and DURNER, W. Internationales Umweltverwaltungsrecht (for the area of international environmental law) In: MÖLLERS, C., VOSSKUHLE, A., WALTER, C. (eds). *Internationales Verwaltungsrecht.* pp. 73 et seqq., pp. 121 et seqq. and pp. 187 et seqq.
[43] KADELBACH, S. *Allgemeines Verwaltungsrecht unter europäischem Einfluss.* Tübingen: Mohr Siebeck, 1999, p. 3.

statutory laws which are universal in their nature. These branches of law are termed so only, because they govern certain relations, which are of international nature. However, each State has its own international private law, international administrative law etc. [44] Thus, a certain degree of isolation and autonomy represents a parallel between both international administrative law and international private law.

III. OUTLINE OF INTERNATIONAL ADMINISTRATIVE LAW

After delimiting the (sub)discipline of international administrative law towards other fields of law, this section aims to analyse international administrative law as a special (sub)discipline of (municipal) administrative law from the viewpoint of its objective and its norms. Further, this section aims also to argue that despite certain attempts for internationalisation, this field of law still remains autonomous and isolated branch of law.

1. Objective of international administrative law

International administrative law has a direct link to the feature, which is referred to as "territoriality of administrative law".[45] This feature has two dimensions: On one hand, administrative law is, in principle, only applied in the territory of the State. Simultaneously, the feature of territoriality also implies that the administrative authorities basically[46] apply their own administrative law in the matters of public administration – a feature, which has been traditionally described as the concept of unity of the *forum* and the *law*.[47]

On the other hand, the existing scholarship has also regularly pointed out the fact that administrative law (i.e. statutory laws) can refer to certain facts that arose from outside the territory of the State. Thus, administrative law may oblige a domestic source of environmental pollution to use certain counter-measures, *irrespective* of whether the pollution occurs in the inland or abroad. It may also take periods of employment into consideration for the purposes of social security payments. A statutory law can also provide, that a person will be responsible also for certain offenses, which were committed outside the territory of the State. The statutory laws in the area of financial law do regularly take into consideration certain taxes, paid by the inland taxpayer abroad. In the area of competition law, a law can provide for certain relevance of a merger, which occurred abroad. Also, statutory law do provide for rules on diplomatic and consular service of officials abroad. Statutory laws, governing administrative proceedings do regularly address the issue of delivering of administrative decisions abroad. Such territorial extensions are frequently referred to as "extraterritorial" applications of administrative law.[48]

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[44] KEGEL, G. *Probleme des internationalen Enteignungs- und Währungsrechts.* Opladen: Westdeutscher Verlag, 1956, p. 6.
[45] OEHLER, C. *Kollissionsordnung des Allgemeinen Verwaltungsrechts.* pp. 43 et seqq.
[46] HANDRLICA, J. Foreign Law as Applied by Administrative Authorities. *Zbornik Pravnog Fakulteta u Zagrebu.* 2018, Vol. 68, No. 2, pp. 193 et seqq.
[47] GROF, A. Zum "internationalen Verwaltungsrecht". p. 213.
[48] VOGEL, K. *Der räumliche Anwendungsbereich der Verwaltungsrechtsnorm.* pp. 20 et seqq.

Taking the extraterritorial applications of administrative law into consideration, one must ask, where is the border between "inland" and "abroad" in administrative law. The answer is following: A clear border is given by the principle of sovereign equality of the States, as imposed by international public law. This provides that any administrative activity of a State *vis-á-vis* the sovereign territory of other State will basically be *illegal*. While strict application of this concept would be theoretically possible, such an approach will certainly be rather impractical. In practice, it will imply, that a State will not give any recognition to any foreign passport, foreign university diploma, foreign driving license etc. Here, a special (sub)discipline of (municipal) administrative law - international administrative law – represents a legal vehicle that "allows domestic administrative law, which aims primarily at protecting public interests and also to find its consequent application to administrative relations with a foreign element."[49]

Consequently, international administrative law is *stricto sensu* not dealing with the issue of "extraterritorial" applications of administrative law.[50] On contrary, it governs those relations of administrative law, where certain foreign element occurs with respect to "inland". Thus, international administrative law is built upon a set of delimiting norms, contained in various areas of substantive law. So, e.g. statutory laws governing traffic law can provide for recognition of a foreign driving licence, statutory laws governing university law can provide for recognition of a diploma issued by a foreign university, statutory laws governing air transport can provide for recognition of a foreign pilot licence etc. In all these cases, it is the applicable delimiting norm of (municipal) administrative law, which provides for recognition of mentioned foreign elements in inland. This is the reason, why German legal scholarship has used to designate international administrative law as a "delimiting law".[51]

This particular nature of international administrative law triggers a dogmatic question, what is the place of this field in the realm of administrative law. It is a matter of fact, that international administrative law does not constitute a coherent section of administrative law, such as traffic law, environmental law or mining law. However, in the past, some authors[52] argued, international administrative law also constitutes a segment of the "special part of administrative law" – similar to the above-mentioned areas. More recently, Dirk Ehlers and Hans U. Erichsen supported[53] this argument, including international administrative law in the structure of their textbook on general administrative law. A part dealing with this topic is also included in the new textbook on EU administrative law, edited by Jörg Terhechte.[54] Given the uniform aim of the discussed (sub)discipline, this article argues in favour of such approach.

[49] OEHLER, C. Internationales Verwaltungsrecht – ein Kollisionsrecht eigener Art? In: LEIBLE, S., RUFFERT, M. (eds), *Völkerrecht und IPR*. Jena: Jaener Wissenschatlicher Verlag, 2006, pp. 131 et seqq.

[50] BISCOTTINI, G. *Diritto amministrativo internazionale. La rilevanza degli atti amministrativi stranieri*. pp. 13 et seqq.

[51] OEHLER, C. Internationales Verwaltungsrecht. p. 131.

[52] HOFFMANN, G. Internationales Verwaltungsrecht. pp. 851 et seqq.

[53] EHLERS, D., ERICHSEN, H. (eds). *Allgemeines Verwaltungsrecht*. 14th ed. Berlin: De Gruyter, 2010, § 4.

[54] TERHECHTE, J., MÖLLERS, C. Europäisches Verwaltungsrecht und Internationales Verwaltungsrecht. pp. 1444 et seqq.

2. Norms of international administrative law

As outlined above, international administrative law is built upon a robust structure of delimiting norms, which are to be found in various areas of substantive law. These delimiting norms share one common feature, which is being referred to as "unilaterality".[55] This "unilaterality" implies, that a delimiting norm provided by (municipal) administrative law can merely cause effects in "inland". A delimiting norm, provided in our administrative law, is not capable to establish any effects "abroad", i.e. in foreign legal orders. In order to gain such effects, reciprocity will be necessary and a corresponding delimiting norm in the foreign legal framework.

Despite "delusional" nature[56] of the discussed (sub)discipline, an attempt can be made to give certain typical examples of delimiting norms with respect to our administrative law:

Typically, delimiting norms do provide for recognition of foreign administrative acts. Here, the terminology deserves certain clarification. It is a fact that there isn't any common understanding concerning the meaning of the term "administrative act". The term is understood differently in various jurisdictions (*Verwaltungsakt, acte administratif unilateral, atto amministrativo*).[57] In this context, the scholarship also uses the terms "public acts" and "quasi-public acts".[58] For the purpose of this article, the term "administrative act" (or "foreign administrative act") aims to address all types of unilateral administrative measures issued by the competent administrative authority. Consequently, by using the term "administrative act", this article will also understand administrative measures such as university diplomas, driver's licences, certificates of airworthiness etc., which are not necessary classified as "administrative acts" in each jurisdiction. This approach is currently generally accepted among legal scholars of public law.[59]

There are numerous examples of delimiting norms, providing for a recognition of foreign administrative acts in existing statutory laws. Thus, the rector of a university recognises a foreign university diploma by his own act of recognition.[60] Similar rules are applicable also with concern to certificates, gained at foreign grammar, or high schools.[61]

[55] SIEHR, K. Ausländische Eingriffsnormen im inländischen Wirtschaftskollisionsrecht. p. 41.

[56] NEUMEYER, K. Vom Recht der Auswärtigen Verwaltung. p. 129.

[57] REINACHER, K. *Die Vergemeinschaftung von Verwaltungsverfahren am Beispiel der Freisetzungsrichtlinie*. Berlin: Taschenbuch, 2005, pp. 61–62 (here, the author points out, that qualification problems can potentially arise by mutual recognition of foreign public contracts, or individual-abstract acts), GERONTAS, A. Deterritorialization in Administrative Law: Exploring Transnational Administrative Decisions. *Columbia Journal of European Law*, 2013, Vol. 13, No. 3, pp. 432 et seqq. (here, the author provides for comparison of the terms "Verwaltungsakt" in the German jurisdiction and "acte administrative" in the French jurisdiction), SCHWARZ, M. *Grundlinien der Anerkennung im Raum der Freiheit, der Sicherheit und des Rechts*, Tübingen: Mohr Siebeck, 2016, pp. 70 et seqq. (here, the author argues, that the institute of "Verwaltungsakt" has actually no appropriate corresponding pendant in any European jurisdiction).

[58] PAMBOUKIS, C. L acte quasi public en droit international privé. *Revue critique de droit international privé*. 1993, Vol. 42, No. 4, pp. 565 et seqq.

[59] RODRIGUÉZ ARANA MUÑOZ, J., GARCÍA PÉREZ, M., PERNAS GARCÍA, J., AYMERICH CANO, C. Foreign Administrative Acts: General Report. In: RODRIGUÉZ ARANA MUÑOZ, J. (ed). *Recognition of Foreign Administrative Acts*. New York : Springer, 2016, pp. 2 et seqq.

[60] Act No. 111/1998 Coll., § 90 Par. 1.

[61] Act No. 561/2004 Coll., § 108 Par. 1.

In both these cases, the applicable delimitation norm provides, that certain effects of a foreign act do arise only based on the domestic decision on recognition. At the same time, there are numerous examples, where delimiting norms, provided by statutory laws, do imply for a recognition *ex lege,* i.e. without formal recognition by the (municipal) administrative authorities. This is the case of foreign driving licenses.[62] A *laisser-passer* for a corpse represents another example of such foreign act.[63] In both these cases, statutory laws do reflect obligations to recognise, which are arising from existing international agreements.[64] In many cases, statutory laws do provide for recognition of foreign acts due to implementation of applicable EU directives. This is the case of authorisation for pursuing investment services[65] and also the case of banking licences.[66] A foreign act, granting citizenship to certain person is also being recognised *ex lege*.[67] As outlined already above, rather than being reflection of any international agreement, this delimiting norm reflects a custom in international public law. Further, some delimiting norms do have no link to any international agreement, or EU legislation – eg. statutory laws, governing the funerary services, provide, that a foreign citizen is to be cremated in inland only, if consent of his State of origin is given.[68]

While all above-mentioned delimiting norms were part of substantive law, one can identify delimiting norms also in the field of procedural law. Also, the rules of administrative procedure do address the effects of foreign administrative acts – eg. regarding usage of such foreign acts in their original language[69] and regarding proofs by such foreign acts in an administrative proceeding.[70]

In all above-mentioned cases, the "foreign element" addressed by the applicable delimiting norms were represented by a foreign administrative act. Such foreign act gain – *via* a corresponding delimiting norm – effects under (municipal) administrative law. However, a "foreign element" can be represented also by certain situation, which occurs exclusively in inland. This is regularly the case of those persons, having the status of extraterritoriality. In principle, the (municipal) administrative law is applicable also these persons, as they are residents in the territory of the State. At the same time, the statutory laws provide for exclusion of these person from certain obligations, duties and responsibilities. So, those persons who possess immunities under international public law are excluded from any responsibility under the regime of administrative offenses.[71] The statutory laws in the area of tax law do provide for similar exclusions from the tax obligations.[72]

[62] Act No. 361/2000 Coll., § 104 Par. 2.
[63] Act No. 256/2001 Coll., § 14 Par. 1.
[64] The Vienna Convention on Road Traffic of 1968 and the Agreement of the Transport of Corpses of 1973.
[65] Act No. 256/2004 Coll., § 24.
[66] Act No. 21/1992 Coll., § 5d.
[67] Act No. 186/2013 Coll., § § 40 Par. 2.
[68] Act No. 256/2001 Coll., § 5 Par. 3.
[69] Act No. 500/2004 Coll., § 16 Par. 2.
[70] Act No. 500/2004 Coll., § 53 Par. 4.
[71] Act No. 250/2016 Coll., § 4 Par. 2.
[72] Act No. 338/1998 Coll., § 9 Par. 1.

This short excursion to the statutory laws in our administrative law clearly shows that delimiting norms are barely matter of one particular field of substantive law. On contrary, they are distributed among number of fields of substantive law – such as traffic law, tax law, university law, banking law etc. Also, as demonstrated above, delimiting norms do appear in rules governing administrative proceeding. While being distributed in numerous fields of substantive law, all these delimiting norms serve the same purpose: They limit application of (municipal) administrative law *vis-á-vis* certain situations. At the same time, they allow effects of certain foreign acts in our territory. This uniform goal of delimiting norms supports the thesis on international administrative law as a special (sub)discipline of our administrative law.

3. Autonomous character of international administrative law

Very recently, Alberto H. Neidhardt described the classical approach to international private law in following way: "The resilience of the classical dogma of isolation means that private international law is typically understood, and examined, as a discipline and set of rules which are impermeable to legal and institutional developments taking place outside its alleged natural and permanent borders, in the contemporary age as well as in the past. Developments in the discipline are considered separately from changes in public international law (…) Isolation translates in well-established external limits as well as internal structure. The discipline is still generally organised along the conceptual schemes and legal divisions in which 19th century jurists placed those rules."[73] In fact (to paraphrase Moliére s *Le Bourgeois Gentilhomme*), Neidhardt not only described the very traditional understanding of international private law, but also perfectly identified the classical approach to its less famous *doppelgänger* –international administrative law- without necessarily knowing it.

Being an integral part of (municipal) administrative law, international administrative law represents an autonomous field of (municipal) public law. From this viewpoint, we can only barely refer on any universal international administrative law. On contrary, we must direct attention to the existence various national projects – i.e. German international administrative law (*internationales Verwaltungsrecht*), French international administrative law (*droit administratif international*), Italian international administrative law (*dirrito amministrative internazionale*) or Czech international administrative law (*mezinárodní právo správní*).

It is a matter of fact, that a number of delimiting norms do reflect obligations, arising from existing international agreements.[74] However, we can only barely refer to any coherent harmonisation of this field by the means of international public law. At the same time, in dualistic model, the delimiting norms reflecting the obligations arising from international public law are always provided by applicable statutory laws. Further, one can identify a rather coherent group of delimiting norms, being caused by the EU directives. This fact implies arguments

[73] NEIDHARDT, A. The Transformation of European Private International Law. A Genealogy of the Family Anomaly (Ph.D. thesis, European University Institute 2018) 27–28.
[74] OEHLER, C. *Kollissionsordnung des Allgemeinen Verwaltungsrechts.* pp. 220 et seqq.

on existence of an EU international administrative law.[75] While one can agree with this argument, such EU international administrative law does not represent a coherent framework of all delimiting norms. Rather, it constitutes a particular part of the existing international administrative law, governing circulation of administrative acts in certain specific areas. Fact is, that despite existence of some EU frameworks, a number of delimiting norms still has no direct link to neither international public law, nor to the EU law.

So, one may argue, that autonomy and some degree of isolationism do represent characteristic features of international administrative law. International administrative law represents a *national project* and is strongly linked to the principles and rules of the (municipal) administrative law. The thesis[76], presented by Schmidt-Aßmann and arguing that "international administrative law is to be understood as the administrative law originating under international law" does not seem correct in this context. The understanding, as proposed by Schmidt-Aßmann, would lead to unsubstantiated reduction of the content of this (sub)discipline.

IV. CONCLUSIONS

This article argued that international administrative law represents a special (sub)discipline, which governs administrative relations with certain foreign element. While having some similarities with both international public law and international private law, international administrative law represents an integral part of (municipal) administrative law. The adjective "international" in the name of this (sub)discipline does not refer to any international relations between the States, but rather to a "foreign" (i.e. international) element, which appears in certain situation.

International administrative law does not constitute a coherent part of substantive law. It contains elements from all existing substantive parts – eg. from tax law, social security law, university law, traffic law etc. In all areas, governed by mentioned fields of substantive law, relations with foreign elements may occur. Such foreign element is regularly a foreign administrative act (eg. a foreign driving licence, foreign university diploma etc). However, also, other foreign elements may appear. Hence, international administrative law *stricto sensu* addresses those cases, where a foreign element occurs in administrative relations with respect to the "inland".

Despite certain attempts for internationalisation by the means of international public law, or harmonisation by the means of the EU law, international administrative law still represents an integral part of the (municipal) administrative law. Referring about *international administrative law* could be therefore seen as misleading. There is no universal international administrative law. Rather, exist several autonomous and to certain degree isolated project – *internationales Verwaltungsrecht, droit administratif international, dirrito amministrative internazionale, derecho administrative internacional* etc.

[75] LINKE, C. *Europäisches Internationales Verwaltungsrecht.* pp. 12 et seqq. and more recently HANDRLICA, J. Is there an EU international administrative law? A juristic delusion revisited. *European Journal of Legal Studies.* 2020, Vol. 12, No. 1, pp. 75 et seqq.

[76] SCHMIDT-ASSMANN, E. The Internationalization of Administrative Relations. p. 2077.