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## REVIEWS AND ANNOTATIONS

**Česká ročenka mezinárodního práva veřejného a soukromého. Praha 2010, roč. 1, 290 s.; Praha 2011, roč. 2, 350 s. [Czech Yearbook of Public & Private International Law, Prague 2010, vol.1, 290 pp.; Prague 2011, vol. 2, 350 pp.]**

The Czech Society of International Law (ČSMP/CSIL), being the successor of the Czechoslovak Society of International Law and founded in 1993 (preface, vol. 2, p. V), raises particular attention by having given birth to a new Journal covering public and private international law. The Czech Yearbook of Public & Private International Law obviously ends a period of search for a new identity in the Czech science of international law after the end of the socialist period and after the separation of the Czechoslovak Federal Republic into Czechia and Slovakia. 40 years from the end of the former Czechoslovak Journal of International Law and almost 20 years from the suspension of publication of the Studies in International Law, which both had appeared in Czech and Slovak languages (preface vol. 1, p. V), the Czech discipline of international law approaches its colleagues in Czechia and abroad in English language. The Yearbook is edited once a year by Professor Pavel Šturma, holder of the chair in public international law at the Charles University in Prague and president of the Czech Society of international Law. The editorial board is set up by scholars in public international law from a number of universities and other high profile institutions in Prague, Olomouc, and Brno. The advisory board assembles well-known professors from Frankfurt/Main, Geneva, London, Pilsen

and Warsaw, and includes the Vice-president of the International Court of Justice Dr. Peter Tomka and Professor Jiří Malenovský, judge at the Court of Justice of the European Union.

Two volumes have appeared so far. They were reviewed and allow an analysis of concept, structure, consistency and contents by comparing them to each other. Both volumes have been made up predominantly by Czech authors or authors of Czech origin (eg Mahulena Hofmannová who in 2010 has been professor of European Law and Transition Studies at the University Giessen, Germany, but graduated from the Law Faculty of Charles University. Currently she holds the SES chair in Satellite Communications and Media Law at the University of Luxembourg).<sup>1)</sup> From abroad Paul Tavernier, professor emeritus at the University Paris-Sud (Paris XI), contributed the article “*Consequences of the application of international humanitarian law in the struggle against terrorism*” to volume 1 (pp. 65 – 72). The second author from abroad without direct Czech background in this volume is Martin Faix who holds master degrees from the University Giessen, but is also a member of CSIL and lecturing at the Palacký University in Olomouc.<sup>2)</sup> Lone Wandahl Mouyal, research fellow at the University of Copenhagen, wrote the contribution “*Diplomatic assurances – A permissible tool in the struggle against terrorism?*” and Katarína Šmigová, assistant at the Faculty of Law at the Paneuropean University Bratislava, “*Theoretical and Practical Impact of International Criminal Law on International Law*” for volume 2 (pp. 113 – 126 and pp. 177

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<sup>1)</sup> Mahulena Hofmannová wrote the article „Monitoring international obligations; the Czech Republic under the surveillance of the Council of Europe Language Charter, vol. 1, pp. 193 – 207.

<sup>2)</sup> Martin Faix contributed „Rules of Engagement – Some Basic Questions and Current Issues“ to vol. 1, pp. 133 – 145.

– 188 respectively). The editor-in-chief emphasizes in his preface to volume 2 that the Czech Yearbook through its authors and editors represents the leading Czech institutions with expertise in the field of public and private international law. On the other hand, over the long-term, “*the Yearbook intends to become a fairly international, though Czech or Prague-based, platform for dialogue of scholars and practitioners of international law in Central Europe and beyond.*” (p. VI). Six of the authors of volume 1 wrote also articles for volume 2 (Pavel Šturma, Emil Ruffér, Josej Mrázek, Veronika Bílková, Pavel Bureš, Ondřej Vicha).

As to the structure of the Czech Yearbook, some common features of the two volumes are visible. They relate to the presentation of the articles and to the fact that both volumes contain a chapter on *Czech Practice of International Law* (vol. 1: pp. 243 – 251; vol. 2: pp. 287 – 322) as well as the chapters “*Book Reviews*” (vol. 1: pp. 253 – 274; vol. 2: pp. 323 – 339) and “*Survey of Czech International Law Bibliography*” (vol. 1: pp. 277 – 290; vol. 2: pp. 341 – 350). The articles are presented by offering an abstract in English language, a shorter resumé in Czech language, key words and details on the authors at their beginning. It might be considered to be a question of taste whether to move the details on the authors to a special chapter/section at the end of each volume. Other journals prefer the latter approach.

The arrangement of the articles, however, differs considerably from volume 1 to volume 2. It may well be that the experience with recruiting contributors showed that the set-up of the first volume was too narrow. Volume 1 is split into three “*Studies*”, eight “*Czech Views on International Law*”, and five contributions to “*International Law in the Czech Republic*”. Such a concept suffers from the impossibility to define the difference between “*studies*” and the other types of contribution. Volume 2 chooses a much more open approach by offering five “*Studies in International Law and Organizations*”, six contributions to “*Human Rights and International Humanitarian Law*”, three articles on “*International Criminal Law*” and three articles on “*Czech Views on Investment Law*”. Obviously, also this division is not fixed once and for ever, but depends on the contents

of the contributions which arrive at the chief-of-editor. The categories chosen for volume 2 help, however, to open the Czech Yearbook of Public & Private International Law for foreign authors and strengthen the possible contribution of the yearbook to the world-wide discussion of issues relating to international law.

Also the documentation on the *Czech practice of international law* in volume 2 in comparison to volume 1 shows considerably richer. In both volumes the Czech contribution to the ongoing work of the International Law Commission (ILC) is dealt with by reproducing Czech statements (vol. 1: pp. 243 – 251; vol. 2: pp. 303 – 306). In addition, volume 2 offers an article on *Czech courts and international law* by Petr Mikeš, who successfully had accomplished his PHD studies in international law at Charles University Prague, including his thesis on a respective topic (pp. 289 – 301). Further to that volume 2 includes a list of ratified international treaties which entered into force for the Czech Republic in the period between 1 June 2010 and 31 July 2011. The category 3 (European Union treaties), however, does not really fit for all the treaties included in this section (vol. 2: pp. 319 – 322).

Considering the intention of the Yearbook to succeed to the former Czechoslovak Yearbook on International Law, the contents and quality of the articles included in the Yearbook will decide. The Czechoslovak Yearbook on International Law, irrespective of its ideological framework in the so-called socialist period of Czechoslovakia, was well-reputed also in the then so-called Western doctrine of international law and reflected a school of thought in international law, which was, as far as permissible at that time, quite independent from Soviet authors, in particular in the areas of state responsibility and sources of international law.

Indeed, there can be found very interesting articles in both volumes of the Czech Yearbook reflecting this tradition of originality and independence from both, the former West and the former East. This goes, giving a few examples from the contributions to volume 2, for Pavel Šturma’s analysis, how to draw a line between the responsibility of an international organization and its member states under international law, in particular as far as the European Union

itself is concerned.<sup>3)</sup> Also Josef Mrázek's point of view on "*The Right to Use Force in Self-Defence*"<sup>4)</sup> referring to the ICJ in the Nicaragua case and remembering the need for legal justification of practice, in order to give evidence to any norm of international customary law, is worth reading and deserves support. Even if Emil Ruffer, "... *But haven't we met before? A brief encounter with the "new" European Union, its (international) legal personality and treaty making power under the Treaty of Lisbon*" asks for more criteria for having retrospectively assigned to the EU prior to the Treaty of Lisbon the status of an international organization side by side with the European Community and the European Atomic Energy Community,<sup>5)</sup> than necessary for definition of an international organization under the rules of law of international organizations, the result stays the same: the EU was an international organization.

Whereas Ondřej Vícha impresses by the systematic of his analysis of "*The Polluter-Pays Principle in OECD recommendations and its application in international and EC/EU law*",<sup>6)</sup> Jakub Handrlica correctly points at the erosion of transparency which took place in the Czech Republic with regard to nuclear

third party liability with the accession to the Vienna Convention on Civil Liability for Nuclear Damage of 1963 in 1994.<sup>7)</sup> Dalibor Jílek knows to convince that in the controversy between Ellen Key and Janusz Korczak the latter's opinion that "*the child is an active subject of human rights and the hub in terms of teaching methods, pedagogical theory and moral consideration*" is correct.<sup>8)</sup> Veronika Bílková deserves full support for coming to the conclusion that a general right to reparation for internally displaced persons has gradually emerged.<sup>9)</sup> Whereas the same respect has to be paid to the contributions of Lone Wandahl Mouyal, Jana Králová,<sup>10)</sup> Petra Ochmannová,<sup>11)</sup> Jan Ondřej,<sup>12)</sup> Katarína Šmigová, and the three contributions to Czech views on investment law,<sup>13)</sup> the contribution of Pavel Bureš<sup>14)</sup> suffers of disregard of the history of piracy in and around Somalia and the article of Pavel Caban<sup>15)</sup> needed also to consider the status of armistice between the two Koreas. Seen as a whole, however, the Czech Yearbook of Public & Private International Law is an impressive product of a young, re-newed, original and independent society of international law.

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<sup>3)</sup> Vol. 2: pp. 3 – 19, discussing the application of the *lex specialis* rule of article 63 of the ILC Draft Articles on International Responsibility of International Organizations (pp. 17 f).

<sup>4)</sup> Vol. 2: pp. 33 – 56 (in particular, 54 – 56).

<sup>5)</sup> Vol. 2: pp. 21 – 32 (23 f).

<sup>6)</sup> Vol. 2: pp. 57 – 67.

<sup>7)</sup> Vol. 2: pp. 69 – 82 (80 – 82).

<sup>8)</sup> Vol. 2: pp. 85 – 93 (93).

<sup>9)</sup> Vol. 2: pp. 95 – 112 (112).

<sup>10)</sup> "*Comments on the draft Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms*", vol. 2: pp. 127 – 142.

<sup>11)</sup> "*Unmanned aerial vehicles and the law of armed conflict implications*", vol. 2: pp. 143 – 157.

<sup>12)</sup> "*Thirty years since the adoption of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons especially the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices*", vol. 2: pp. 159 – 173.

<sup>13)</sup> Vojtěch Trapl, vol. 2: pp. 219 – 232; Tomáš Fecák, vol. 2: pp. 233 – 267; Vladimír Balaš: vol. 2: pp. 269 – 286.

<sup>14)</sup> "*To have or not to Have a Special Tribunal for Somali Pirates?*", vol. 2: pp. 189 – 197.

<sup>15)</sup> "*Preliminary Examinations by the Office of the Prosecutor of the International Criminal Court*", vol. 2, pp. 199 – 216