

tilateral treaty interpretation situation. Although this might serve the goal of creating a logically consistent framework, this result would not seem justified on policy grounds.

The book is tightly organized and fully discusses the relevant case law. It examines separate histories of Articles 62 and 63, although it does not use that history to justify separate theoretical treatment of these articles or different policy goals that might have been intended. In fact, the histories do justify *such separate treatment*.

The book has a detailed and useful English summary at the end. The translation is understandable but in some places extremely literal. It would have been worth the effort to have additional time spent in its preparation by someone whose first language was English, in order to make it more understandable and interesting to non-Italian, non-civil law lawyers.

The overall treatment by the Court and by Davi' of intervention issues has been restrictive. John Miller has cogently placed the issue in its proper perspective as follows:

Encouraging states to intervene more often and more actively, and opening the Court to intervention by persons other than states will not make the Court more active. Only the build-up of a docket of contentious cases which affords reasonable opportunities for intervention can do that. But a more active participation by third states and an extension to non-states of the right to participate could make the Court more relevant in international litigation, and enable it to serve more effectively the causes of international peace and justice.⁸

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Verfahren und Völkerrecht. By Martin Limpert. Berlin: Duncker & Humblot, 1985. Pp. 259. DM 96.

Having in mind the highly developed law of procedure governing the process of legislation in constitutional states, the author of this Freiburg dissertation looks for corresponding international procedural law that regulates the establishment of (substantive) international law. In the author's opinion, the codification conferences convened by the UN General Assembly in performance of its task of encouraging "the progressive development of international law and its codification" (Art. 13(1)(a) of the UN Charter) constitute an especially important way of "setting international law"—a way appropriate to the current problems of the international community (p. 35). The work's subject is how law is "made" in those conferences.

In the first part ("International Lawmaking as a Procedural Problem"), Limpert gives, among other things, a detailed description of the conferences' preparation by either the International Law Commission (ILC) or another UN body, depending on the General Assembly's assessment of the codification task as a "nonpolitical" or a "political" one. The drafting of the 1969

⁸ Miller, *Intervention in Proceedings before the International Court of Justice*, in 2 THE FUTURE OF THE INTERNATIONAL COURT OF JUSTICE 550 (L. Gross ed. 1976).

Vienna Convention on the Law of Treaties and the 1982 Convention on the Law of the Sea is used to exemplify these two different forms of preparation. Limpert modifies the traditional view of international law scholars who hold that codification work "should be undertaken not by government delegates but by international lawyers working with a full measure of independence and on a purely scientific basis."¹ He pleads that the ILC be entrusted with "highly political codification projects" as well, because he considers its character—besides being scientific—as being political (pp. 121 ff.).

Continuing to use the examples given above, the author now describes in detail the procedure of both conferences (pp. 140–200). He contrasts the concentrated handling of a clearly delimited subject matter in Vienna with the "temporarily anarchic" procedure (p. 196) of the Law of the Sea Conference, which was burdened with the task of codifying all maritime international law and with irrelevant problems such as that of a "New International Economic Order." Limpert examines as the three typical elements of the latter conference's procedure the "overall package deal approach," the decentralized and informal procedure, and the consensual procedure.

In the second part ("International Lawmaking Procedure as a Problem of International Law"), the author examines the rules of international law regulating the codification conferences' procedure, as well as the influence of the current negotiations on international law and, finally, the consequences of unilateral acts of participating states during the negotiations.

Limpert succinctly develops the main problems of procedure in today's codification work under the auspices of the United Nations, but does not add much that is new to the large literature on the ILC² and on the Vienna and the Law of the Sea Conferences.³ His description, though not novel, is

¹ Hurst, *A Plea for the Codification of International Law on New Lines*, 32 GROTIIUS SOC'Y, TRANSACTIONS 135–53 (1946).

² See particularly Rosenne, *The International Law Commission, 1949–59*, 36 BRIT. Y.B. INT'L L. 104 (1960); H. W. BRIGGS, *THE INTERNATIONAL LAW COMMISSION* (1965); R. P. DHOKALIA, *THE CODIFICATION OF PUBLIC INTERNATIONAL LAW* (1970); R. THODE, *THE INTERNATIONAL LAW COMMISSION* (1972); and B. G. RAMCHARAN, *THE INTERNATIONAL LAW COMMISSION* (1977).

³ I will just mention the major works that concentrate on questions of procedure. For the Vienna Conference, see Daudet, *Note sur l'organisation et les méthodes de travail de la Conférence de Vienne sur le droit des traités*, 15 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL [AFDI] 54 (1969); and S. ROSENNE, *THE LAW OF TREATIES: A GUIDE TO THE LEGISLATIVE HISTORY OF THE VIENNA CONVENTION* (1970). For the Law of the Sea Conference, see Eustis, *Procedures and Techniques of Multinational Negotiation: The LOS III Model*, 17 VA. J. INT'L L. 217 (1976/77); Treves, *Devices to Facilitate Consensus: The Experience of the Law of the Sea Conference*, 2 ITAL. Y.B. INT'L L. 39 (1976); Jaenicke, *Die Dritte Seerechtskonferenz der Vereinten Nationen*, 38 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 438 (1978); Vitzthum, *Friedlicher Wandel durch völkerrechtliche Rechtsetzung*, in *VÖLKERRECHT UND KRIEGSVERHÜTUNG* 123 (J. Delbrück ed. 1979); Buzan, *Negotiating by Consensus*, 75 AJIL 324 (1981); Treves, *Une Nouvelle Technique dans la codification du droit international*, 27 AFDI 65 (1981); J. P. LÉVY, *LA CONFÉRENCE DES NATIONS UNIES SUR LE DROIT DE LA MER* (1983); and Eitel, *Die Bundesrepublik Deutschland auf der 3. UN-Seerechtskonferenz*, in *DAS NEUE SEERECHT* 15 (J. Delbrück ed. 1984).

worth our attention just because of the author's original question: Which norms of international law do determine the codification process?

Here the author cannot offer much more than Bernhardt did about 30 years ago;⁴ he still has to recognize that international procedural law is of a "quite fragmentary character" (p. 216). There are only the rules of the Vienna Convention on the Law of Treaties regarding the adoption of the text of a treaty and the invalidity of treaties, and the principles of the sovereignty of states and of legal protection for bona fide acts; that is all. These few rules, indeed, leave wide gaps that states can fill, especially by agreement on rules of procedure for each conference, including codification conferences as well as all the other bilateral and multilateral treaty negotiations. Limpert explains this modest result (rightly, the reviewer thinks) as deriving from the opinion of governments that international conferences are a diplomatic subject matter that should remain without a detailed legal order. Astonishingly enough, the author—while stressing the importance of formalized procedure for the formation of "right" rules (pp. 17, 248)—agrees with this opinion (pp. 216 ff.; compare pp. 244 ff.); accordingly, he abstains from proposing any further developments or improvements in international procedural law. What the reader now knows in regard to the different procedures discussed in the first part is that everything is equally permitted. Also, the second part (pp. 201–45) is very short compared to the first (pp. 20–200) and, while barely mentioning all the material in the first part, does not seem to exhaust its subject. For instance, the author could have examined more carefully the procedure of the Law of the Sea Conference (constituting a model for future codification conferences) in the light of the traditional concept of sovereignty.⁵ Furthermore, he might have dealt with specific situations in the course of codification to which the Vienna Convention rules apply or do not apply, which would make the further development of those rules necessary. It might also have been helpful and have broadened the basis of some of his statements if the author had continuously taken into consideration historical conferences and other UN codification conferences, like the Hague Peace Conferences of 1899 and 1907, as he did in the chapter on voting procedures (pp. 129–33).⁶

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⁴ Bernhardt, *Völkerrechtliche Bindungen in den Vorstadien des Vertragsschlusses*, 18 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 652 ff. (1957/58).

⁵ See Tomuschat, *Der Verfassungsstaat im Geflecht der internationalen Beziehungen*, 36 VERÖFFENTLICHUNGEN DER VEREINIGUNG DER DEUTSCHEN STAATSRECHTSLEHRER 7, 30 (1978).

⁶ See R. G. GRUBER, *INTERNATIONALE STAATENKONGRESSE UND KONFERENZEN, IHRE VORBEREITUNG UND ORGANISATION* (1919); Y. DAUDET, *LES CONFÉRENCES DES NATIONS UNIES POUR LA CODIFICATION DU DROIT INTERNATIONAL* (1968); Sohn, *Voting Procedure in International Conferences for the Codification of International Law, 1864–1930*, in *JUS ET SOCIETAS: ESSAYS IN TRIBUTE TO WOLFGANG FRIEDMANN* 278 (G. M. Wilner ed. 1979); and Sohn, *Voting Procedures in United Nations Conferences for the Codification of International Law*, 69 AJIL 310 (1975).