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Chapter 1

The Phenomenon of Yearbooks in International Law: An Introduction



Otto Spijkers, Wouter G. Werner and Ramses A. Wessel

In 1970 the first *Netherlands Yearbook of International Law* (NYIL) was published. The current Volume is No. 50, which means that the Yearbook has now been with us for half a century. The current General Editors decided not to let this moment pass unnoticed, and have devoted this entire Volume to an analysis of the phenomenon of Yearbooks in international law as such. Indeed, not many academic disciplines have Yearbooks, so why do we? What is the added value of having a Yearbook alongside the abundance of international law journals, regular monographs and edited volumes that are produced each year? Does the existence of Yearbooks tell us something about who we are, or who we think we are, or what we have to contribute to the world?

The first edition of NYIL mentioned the following in its Introduction:

This Yearbook starts its life as a result of two generating factors. On the one hand, a steady demand exists for the publication of national practice in the field of international law. On the other hand, the rapidly increasing stream of national and international materials demands articles and short commentaries to enable the general legal practitioner, the State representative, or the international lawyer not specialized in the subject in question to gain a clear view of the situation.

Both these factors result from the constantly growing interdependence of States, an interdependence that is particularly evident in the smaller, high income States like those of Western Europe. In this part of the world more and more rules of international law apply, not only to the actions of State representatives but also to the daily life of the citizen. This development

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has a corollary a rapidly growing number of lawyers using a large part of their energy in and around the international branch of their discipline and looking for encouragement to publicise their views.

While much more is to be said about the reasons to establish this Yearbook,¹ it is striking that no specific reasons are mentioned why a Yearbook would do the job of analysing new international law developments better than or differently from a regular journal or any other type of publication. Even in the Joint Announcement, which immediately followed the Introduction quoted from just above, and in which the Boards of Editors of both the *Netherlands International Law Review* (*Nederlands Tijdschrift voor Internationaal Recht*) and of the *Netherlands Yearbook of International Law* jointly informed the readers of the latter that the two were to be offered as a joint subscription, nothing is said about how the two may complement each other. Sure, the value of international law and international cooperation more broadly had become clear in post-war Europe and, indeed, it was no longer restricted to inter-state relations, but increasingly affected the position of individuals. But why a Yearbook? The reason may very well have been that the British Yearbook had become a success, but that mainly shifts the question to the creators of that Yearbook, and the ‘genealogical’ approach used by Sara Kendall in her contribution reveals that the ‘genre’ as such has much older roots.² As some of the contributions to this Volume testify, something of national pride and a feeling that a country had specific ‘national’ perspectives on and contributions to international law might have triggered the proliferation of Yearbooks in our field of study. Yearbooks usually carry the name of their host state in their title, and they seem to claim themselves to be an authoritative contribution to the development of international law. As phrased by Jan Klabbers in this volume, “Somehow the yearbooks [seem] to speak for entire communities, in ways that rarely apply to journals, let alone research monographs.”³

But there is more. As testified by the conceptual contributions to the present volume, Yearbooks do not just reflect (positions on) state practice, but in that sense also function as specific didactical tools and have helped us “reading the language of international law as it is actually used, outside the context of research monographs, learned articles, and textbooks”.⁴ And, in doing so, Yearbooks usually take some distance from day-to-day events and are known for longer, more reflective articles on fundamental questions of international law. In times in which for early career scholars in particular ‘publish or perish’ has become real, Yearbooks have become less visible and perhaps less attractive research outlets. The proliferation of journals on almost every aspect of (international) law allows for researchers to ‘score’ faster and to build the publication list that these days so much defines the development of their careers. And, are these journals—or blogs!—not a better way to present analyses of state practice and case law than the ‘slow research’ that is the traditional hallmark of Yearbooks? And, if so, whatever happened to the idea that “yearbooks

¹As is done in Chap. 20 of this volume.

²See Chap. 4.

³Jan Klabbers, Chap. 5.

⁴Ibid.

tend to very deliberately signal that to publish in the Yearbook is to enter a relatively elite cadre that is part of a venerable tradition, at once national and cosmopolitan”, as phrased by John Haskell in his contribution?⁵

Despite this traditional ‘elite’ image of Yearbooks, the status of publications and publication fora differs in each and every national academic community. The question indeed is to what extent Yearbook contributions still count as something special if, despite its solid contribution to the development of international law thinking it is simply not counted in national rankings and evaluation systems because it is merely a contribution to an ‘edited volume’? What then becomes the added value of Yearbooks?

This question was behind the request of the current Volume Editors of the NYIL to their colleagues around the world when they asked them to reflect on the following set of issues in a contribution to the anniversary edition:

- (a) The *history* of the Yearbook you are editing: when was it founded, by whom and in what historical context?
- (b) The *development* of the Yearbook you are editing: how has your Yearbook evolved over time? Has it undergone important changes, and if so why?
- (c) The *function* and *impact* of your Yearbook: do you know whether the Yearbook has had impact on academia, politics or case-law?
- (d) The *future* of your Yearbook: how do you see the function and position of the Yearbook in the coming ten or twenty years? (e.g. in light of the development of ICT and online publishing).

For the first time in history, on 27 September 2019, editors of general Yearbooks of international law met at the birthplace of the NYIL, the T.M.C. Asser Institute in The Hague. Not only to celebrate the NYIL’s 50th birthday, but also to exchange experiences and ideas related to their Yearbooks. This unique moment in time resulted in a unique exchange of ideas which is reflected in the current volume.

The answers to the abovementioned questions show the radically different contexts in which Yearbooks were established and the different paths they undertook. The Polish Yearbook, for example, grew out of a spirit of intellectual rebellion against communist rule. It was also an attempt to build bridges with the West and to create a forum for scholars to make their work known to the outside world. A very different kind of rebellion informed the establishment of the Netherlands Yearbook, with a new generation of scholars in the 1970s seeking to create a platform that was different from already existing reviews in international law. The Mexican Yearbook stresses the more pragmatic reasons behind its creation: the increased participation of Mexico in international institutions (such as the General Agreement on Tariffs and Trade (GATT), the North American Free Trade Agreement (NAFTA), and the Inter-American Court of Human Rights) called for a platform dedicated to international law. The choice for a Yearbook instead of a journal was informed by the concern that there would simply not be enough submissions to fill several issues each year. For the purposes of this issue, a very special case is the Indonesian Yearbook. There

⁵Chapter 3.

was no Yearbook in Indonesia when we organized the seminar in September 2019. However, when Dr. Afriansyah (University of Indonesia) attended the seminar, he got inspired by all the stories of Yearbook editors and decided to explore whether it would be possible to create a Yearbook for Indonesia as well. By now the preparations for the publication of an Indonesian Yearbook of International Law have begun. We could continue this list with all the particular circumstances and reasons behind the creation and development of each Yearbook, such as the rather unique political situations in Palestine or Taiwan, the regional aspirations of the African Yearbook, or the post-WWII context in which the German Yearbook arose. The picture, however, is clear: Yearbooks are rooted in and reflect national or regional histories and national struggles. They also tell stories of specific individuals or groups with a project. Reading the different chapters of this volume, therefore, is also reading brief histories of countries and regions whose name the Yearbooks carry. The same goes for the specific set-up, the editorial composition or the prospects of the Yearbooks. Some Yearbooks, for example, situate themselves within specific schools or approaches such as positivism or post-colonialism. Other Yearbooks are agnostic on this issue or have evolved from a more positivistic orientation to a broader view on what counts as relevant international legal scholarship. These are not just academic debates, but debates rooted in the political and research contexts in which the Yearbooks operate.

Despite the obvious differences between Yearbooks, it is also possible to detect some common threads across the various contributions. Taken together, they tell a story about the complex and sometimes paradoxical relation between the national and the international. Below we will discuss a few of these common themes.

One of the topics that recurred in several contributions was the role of the Yearbook as the voice of a nation or region. Not coincidentally, several Yearbooks were introduced in the context of a nation that (re)established itself on the international plane. The Japanese Yearbook, for example, was launched a few years after Japan regained independence and was admitted to the United Nations. The Australian Yearbook was created in the context of increased assertiveness in international circles and an increasing recognition of its international legal personality. The establishment of the German Yearbook cannot be understood if one does not take into account the postwar reconstruction of Germany, both domestically and diplomatically. A somewhat opposite story comes from the Chinese (Taiwan) Yearbook. The Yearbook was prompted by the de-recognition of Taiwan as representative of China in the UN and the decision of the United States to move its diplomatic recognition from Taipei to Beijing. The Yearbook was (is) thus part of Taiwan's efforts to make itself heard in international diplomacy. The same goes for the African Yearbook, whose creation was in part spurred by the desire to make the African contribution to the development of international law more visible. A similar ambition underlies the Ethiopian Yearbook, which not only builds on the country's longstanding engagement with international law, but also on the role of (the horn of) Africa more generally. The Palestinian Yearbook, to mention a last example, is focused on international lawyers working on issues of particular relevance to Palestine. The Yearbook is thus a reflection of assertiveness (making these issues heard internationally), but also part of a struggle for recognition. Yearbooks can function as a national voice in different ways.

One is the recording of state practice or a discussion of national developments that have relevance for international law more generally. Another way is the creation of a podium for scholars from national or regional communities to publish in English and to be read more widely. This means Yearbooks are not only expressing, but also forming the voice of specific communities. The Czech Yearbook, for instance, was partly created in order to offer especially young scholars the opportunity to publish in English. The same more or less applies to the Hungarian Yearbook, which also seeks to create a forum for (young) national scholars and to demonstrate Hungarian scholarship to the outside world. The Polish Yearbook initially also focused on national scholars publishing in English, but has by now widened its scope and also assumed a role as podium for (young) scholars from Central and Eastern Europe (although scholars from other parts of the world also publish in the Yearbook). The Finnish Yearbook has found a unique way to present the work of young scholars to a broader audience. The Yearbook offers recently graduated PhD candidates the opportunity to publish the lectures they present at the defense, together with the questions and comments of the opponents. At the seminar in September 2019, several Yearbooks showed an interest in following the example set by the Finnish Yearbook. Of course, the idea of the Yearbook as a voice of the national community or practice does not apply with equal force to all Yearbooks. Especially in the articles sections, several Yearbooks have followed the trend towards internationalization in academia and publish work from scholars across the globe. The German Yearbook, for example, reports a transformation from “Germans talking to the world” to a periodical with a large majority of publications from non-German authors. However, in other parts of the Yearbook the idea that this is a publication that is somehow tied to a national community has survived, albeit in different forms and shapes.

Yearbooks not only help to present national practice and domestic scholarship to the outside world; they also bring the international into the domestic world. We already mentioned how the establishment of the Mexican Yearbook was prompted by the need for more insight in international law because of the state’s increased participation in international institutions. The Canadian Yearbook (initially) not only functioned as a way to project Canadian perspectives of international law upon the world, but also to bring international legal scholarship to Canada. The French Yearbook also goes beyond informing the world about French practice and perspectives, bring “a legal approach in the observation of international life” to a French audience as well. The 2019 issue of the *Anuario Español de Derecho Internacional* on Catalonia is a concrete example of the role of Yearbooks bringing in international law into domestic legal and political struggles. As the history of the Italian Yearbook shows, bringing in ‘the international’ may have a great impact on domestic scholarship. For the Italian Yearbook this meant a shift to English, which also came with a reorientation of style and methodology.

This points to something that was mentioned in several contributions as well as in the oral presentations during the seminar: Yearbooks not only create platforms for scholars to publish on, they are also vehicles for building communities of international lawyers. They help to create a research culture and transcend the boundaries

of particular schools and institutions. Around the Yearbooks, epistemic communities may emerge, i.e. groups of globally recognized experts, able to inspire, and to advise policy makers on how international law can be used to promote international solidarity and resist prevalent tendencies hinging towards nationalist isolation. To do so successfully, we as Yearbook editors must constantly aim to see and paint the bigger picture. Otherwise, we might end up with a new Babylonian confusion of tongues, in which international lawyers break up into isolated groups of ‘specialists’, only conversing amongst themselves, in a language no outsider will be able to understand.

On the occasion of the 10th anniversary, the NYIL editors expressed the hope that the next fifty years “will not only see progress for our Yearbook, but also development in and increased respect for international law as a whole!”⁶ Forty years later, the notion of progress through international law may have become more complicated. Yet we are proud to be part of the long heritage of thinking about international law that started with a new generation of lawyers in 1970 and look forward with great expectations to the next 50 years.

Editors of this Volume Professors Wouter Werner (VU Amsterdam) and Ramses Wessel (University of Groningen) are the General Editors of the Netherlands Yearbook of International Law, Prof. Otto Spijkers (China Institute of Boundary and Ocean Studies (CIBOS) of Wuhan University) is member of the Editorial Board.

⁶NYIL 1979, Preface.