

Gernot Biehler

Procedures in International Law



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Preface

Legal procedures determine what the law is and what may be possibly enforced. Normally left to the practitioners their role particularly in the field of the grey zones of international law merits closer attention. This book introduces a procedural perspective to better deal with the often inchoate nature of international law both in practice and doctrine.

International private law or the conflict of laws have probably rendered the greatest service to an understanding of procedural as opposed to substantive law due to the precedence on the *lex loci proceduralis* over any foreign *lex causae*. To better deal with “Italian Torpedoes” and other inconsistencies of the international judicial system an overview of the different bases of national jurisdictions is provided in Chapter 4.5. which is possibly the first of its kind. It can give a first orientation to the practitioner in international litigation and inform doctrine.

Jurisdiction and other procedural issues may only be fully appreciated when international law both public and private may shed its light on the varied legal procedures generating international law both nationally and internationally.

I am nevertheless all too conscious of the incompleteness of this attempt to establish a genuine procedural perspective in international law. Challenging to the reader, I only hope that any deficiencies in this attempt will prove useful in illustrating the need for further detailed studies on the issue, if I may be so fortunate to take part in such endeavours or not be so privileged to do so again.

I feel particularly indebted to three great scholars; the late Professor F. A. Mann, Lord Justice Lawrence Collins and Professor Andreas Lowenfeld of New York University for giving credibility to a comprehensive understanding of all international law both public and private without which the ideas suggested here would not have seen the light of the day. This is an understanding which in the German context is only a distant memory associated with Wilhelm Wengler and Count Helmuth James Moltke.

More immediately I have to acknowledge the contribution of Professor Hilary Delany who drafted the final chapter and helped on all stages of the book. I am at a loss to explain her friendly intellectual support reaching far beyond her duties as Head of the Law School of Trinity College Dublin. However, I gladly reciprocate her last book’s dedication. (The Right to Privacy, Thomson Round Hall 2008). Mr. Conor Wright MA (Dubl.) BL helped to draft the national bases of jurisdiction, Herr Jochen Rauber did the same for the case law in Chapter 6 and Miss Brenda Carron LL.B. (Dubl.) compiled the tables and index and did most of the proof reading. All contributed greatly and fulfilled their tasks with admirable skills.

Frau Dr. Brigitte Reschke, Legal Editor at Springer Heidelberg, made this book possible. From the first mentioning of the idea at a Staatsrechtslehrertagung right up to the printing stage her friendly and most efficient support made it a pleasure to work together.

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