

BOOK REVIEWS

(edited by *Marco Gestri*)

STEFAN TALMON (ed.), *German Practice in International Law*, Cambridge, Cambridge University Press, Vols. 1 (2019), pp. 467 and 2 (2020), pp. 534.

Customary international law is a paradoxical creature. It purports to rest on the actual conduct of States – what they say and do – yet the process of deriving law from practice remains contested and structurally biased. The 21st century, with its decentralized information environment, has brought about an explosion of accessible State practice. Heads of State, foreign ministries and diplomatic agents now disseminate positions through press conferences, impromptu interviews, and even social media posts. While these tools may democratise access to a certain extent, there is a risk that thoughtful diplomacy will be replaced by contradictory and potentially misleading soundbites. At the same time, older critiques remain valid: not all practice is equally visible, and the conduct of English-speaking States continues to dominate legal discourse and court proceedings. Whether this hegemony is softening – due to new multilingual sources or digitized repositories – is still an open question.

Be that as it may, despite codification efforts and the proliferation of treaties, State practice retains a foundational role in identifying and developing international norms. The International Law Commission’s 2018 Draft Conclusions on Identification of Customary International Law confirmed that both general practice and *opinio juris* remain essential and underlined that the identification of customary norms “involves a careful examination of available evidence” (YILC, 2018, Vol. II, Part Two, commentary to conclusion 2, p. 125).

In this changing landscape, the German Practice in International Law (GPIL) series by Stefan Talmon – the first comprehensive presentation of Germany’s international law practice in English – could not be more timely. The first two volumes, covering 2019 and 2020, respectively, are joined by a continuously updated online platform, which functions as both a supplement and a scholarly blog. There are a number of good reasons to pay special attention to the German practice. As the publisher notes, Germany is “the world’s fourth-largest economy and a powerhouse of the European Union”. As Michael Wood observes in his review, Germany is a country which approaches international law with a high degree of engagement and “seriousness” (WOOD, “German Practice in International Law 2019. By STEFAN TALMON”, BYIL, 2024, advance article, p. 1). Finally, as Talmon himself observes, despite the importance

attributed to international law in Germany, German practice is little known and neglected even in German textbooks, which tend to cite English-language collections of practice preferentially (Vol. 1, p. xiii). The GPIL volumes, therefore, fill a critical gap.

Each GPIL volume is organized by subject-matter, providing a systematic digest of the country's practice. Volumes 1 and 2 are divided into 11 thematic chapters each that reflect major fields of international law. These range from foundational topics (e.g. "Foundations and functions of international law") to State-centric issues ("States and their organs", "State jurisdiction and immunities", "State responsibility and liability"), treaty and resource regimes ("Inter-State political and economic relations and transactions", "Natural resources and the environment"), specialized domains ("Antarctica, sea, air and space"), human-centric concerns ("Individuals, their human rights and their international criminal responsibility"), international organizations ("The United Nations and other international organisations"), the use of force ("Use of force, arms control and disarmament"), and the peaceful settlement of disputes ("International disputes and their settlement"). Each chapter contains numerous case studies on legal topics relevant to the given year. Each case study is a concise essay on a particular instance of German practice. The 2019 volume includes 75 case studies, and the 2020 volume 73.

The methodology combines a narrative analysis of events with extensive reference to primary sources. For each issue – whether a diplomatic incident, policy statement, court decision, or multilateral negotiation – the authors first recount the facts and Germany's actions or official statements, then offer commentary on the legal questions involved and Germany's position. GPIL also provides readers with raw materials to consult. Each volume contains annexed reference material with a digest of international law-related statements by Germany during that year (Annex 1) and a list of international agreements concluded by Germany (Annex 2). The annexes are substantial: the digest of statements, for instance, spans 61 pages for 2019 and 102 pages for 2020 and includes excerpts from parliamentary debates, Foreign Office press releases, UN Security Council statements, and other official communications that would otherwise be scattered across various sources. Including these primary documents alongside the analytical chapters highlights GPIL's dual purpose: it serves as both a research tool, through the compilation of sources, and an interpretive guide, through the case study analyses.

The volumes also cover a broad range of topics reflecting Germany's engagement with international law. For instance, Volume 1 devotes special attention to Germany's tenure as an elected member on the UN Security Council in 2019-2020, examining its voting and statements on issues like humanitarian access in Syria, climate change and the protection of human rights

in North Korea. Volume 2 continued with Security Council-related practice while also addressing new topics, such as the legal implications of the COVID-19 pandemic and Germany's role in global health governance. Across both volumes, readers will find case studies on topics as varied as cyber operations, diplomatic protection, sovereign immunity, treaty succession, maritime disputes, international criminal justice, and human rights. The consistency of chapter topics between the volumes suggests an editorial commitment to covering "the full spectrum of public international law", a goal explicitly stated on the GPIL website. This thematic consistency will facilitate continuity in future volumes, enabling comparisons to be made between Germany's practice in each area.

One of the most notable features of GPIL is the style of commentary that accompanies the collection of State practice. Rather than merely reproducing Germany's official statements, Talmon and his contributors offer analysis that is often evaluative and at times critical. The authors do not hesitate to provide context or point out the inconsistencies in Germany's positions. For instance, in the Vol. 2 chapter on State responsibility, the editors take the view that "Germany mistakenly attribute[d] acts by the Houthi rebels to the State of Yemen" in a particular instance, thereby openly identifying a legal error in Germany's analysis of attribution (Vol. 2, pp. 157-160). Such frank evaluations demonstrate that GPIL's approach is not one of passive chronicling; it actively evaluates practice, as another reviewer has noted (ROEBEN, "German Practice in International Law 2019 by STEFAN TALMON", ICLQ, 2024, pp. 548-549). Talmon's editorial choice to allow critical or interpretive commentary contrasts with some other State practice digests. For example, the long-running "UK Materials on International Law" in the British Yearbook of International Law traditionally presented extracts of British practice with minimal editorial critique, largely letting the government's words speak for themselves. Similarly, the editors of the Canadian Yearbook of International Law present more descriptive collections of statements, refraining from criticism of their own State's policies. In this respect, GPIL's style is more reminiscent of the digests of practice of the *Annuaire français de droit international* and our Italian Yearbook of International Law, which are composed of self-contained and contextualised case notes.

That said, the tone of GPIL's commentary is not polemical and remains grounded in legal argument. The case studies typically cite authorities and sources of international law in evaluating Germany's positions, combining the descriptive function of a digest with the analytical function of a journal article. An illustration of the scholarly ambition of GPIL's editorial approach can be seen in the case study on the targeted killing of Qasem Soleimani (Vol. 2, pp. 344-357). While most notes in the series combine factual recounting with concise

legal commentary, the Soleimani case stands out for its exceptional depth. The nearly 15-page commentary offers a rich analysis of the legality of the US strike under the UN Charter's rules on the use of force, the requirements of necessity and immediacy for self-defense, the legal consequences of operating on Iraqi territory without express consent, and the *ius in bello* targeting rules. While Germany's official reaction was cautious and legally non-committal, the GPIL commentary goes much further than documenting the Country's position. In this instance, the case study reads more like a doctrinal article than a typical note on State practice assessing the broader legal issues and engaging with scholarly debates.

Another notable editorial decision was to include multiple contributors, including junior researchers and students, as well as a few renowned academics (from the 2022 volume onwards). Both volumes credit 21 authors: Talmon as editor plus a team. The inclusion of students is somewhat unusual compared to other State practice digests compiled by a single author or a small group of practitioners. Yet the outcome appears to be positive: the style remains consistent – no doubt due to Talmon's heavy editorial hand–, and the involvement of multiple authors allows the project to cover extensive materials. Ultimately, the volumes read as a unified whole maintaining a high standard of scholarship.

The distinctive two-tier format feature of the GPIL project mentioned above includes an online GPIL blog (gpil.jura.uni-bonn.de) and annual print volumes published by Cambridge University Press. The blog was launched in early 2017 and is continuously updated with case studies and news on Germany's international law practice. It serves as a near-real-time repository of the first drafts (without footnotes), which are then refined in the volumes. This entails an inevitable lag: the volumes for 2019 and 2020 appeared in mid-2022 and early 2023 respectively. In the interim, the blog ensured that important developments were documented often within days or weeks of their occurrence. The posts carry DOIs and can be cited as interim publications. Notably, the blog is also open access, whereas the Cambridge volumes are expensive academic books, accessible mainly via libraries. The blog, therefore, democratizes access to Germany's practice, as researchers around the world can consult the website for the latest developments. The hardcover volumes then serve as curated references that many libraries will acquire for their collections. This model could well be emulated by other State practice projects to keep information current without sacrificing the scholarly rigor of a formal digest.

The Italian Yearbook of International Law implemented a similar hybrid model as early as 2014 by creating an online complement to its printed volumes (“Italy’s Diplomatic and Parliamentary Practice on International Law” at: www.italyspractice.info). The blog-like

platform posts excerpts of parliamentary debates and governmental statements related to Italy's international legal practice. Also in this case, posts are often accompanied by concise commentary or context provided by the editors, delivering expert analysis almost in real time that might otherwise have to wait for the annual print cycle.

The GPIL volumes draw on a wide array of primary sources to document Germany's practice. The books include "primary materials, including diplomatic correspondence, statements and court decisions" (Vol. 1, p. i). Flipping through the case studies or the annexed digest of documents, one finds frequent quotation of Foreign Office statements, Federal Government press releases, parliamentary records (Bundestag debates and committee reports), judgments of German courts, submissions to international courts by Germany, UN Security Council and General Assembly statements, treaties and diplomatic notes, and other official texts. GPIL also captured a number of joint statements or EU statements where Germany's position is expressed in concert with partners (for example, joint EU member statements on international law issues).

A particular strength is the inclusion of German practice from domestic courts that raise issues like universal jurisdiction, foreign sovereign immunity, or the implementation of international arrest warrants. These judicial materials are not easily accessible to non-German speakers, so GPIL's translated quotes are extremely valuable. As for executive branch practice, GPIL gathers statements from the Federal Foreign Office and other ministries. Sometimes these are delivered in international fora (e.g. explanations of votes at the UN or statements at international conferences), other times they are responses to parliamentary questions or press query answers in Berlin. The series also notes diplomatic correspondence, such as letters to the UN Security Council, which are appropriately reproduced or cited. GPIL might mention a policy remark made by an official in a newspaper interview or via social media that had legal significance, but it typically prefers to source the official record.

One of the most striking features of the first two volumes of GPIL is the consistently critical thread running through them: the editors' carefully scrutinize the tension between principled legal arguments and political pragmatism. Cases where Germany's positions reveal caution or inconsistencies weakening the government's professed commitment to the rule of law are revealed without hesitation, sometimes even in the title of the case study.

In several instances, Germany's legal language is criticized for its ambiguity or its political connotations. In the very first case, the one that opens the first volume, for instance, Germany's frequent invocation of a "rules-based international order" is examined, with the concept itself being dissected as imprecise, lacking the normative clarity of binding

international law and risking the dilution of legal standards (Vol. 1, pp. 1-3). Similar concerns arise with Germany's promotion of the so-called "Alliance for Multilateralism", framed by the author, Mirjam Reiter, as a political initiative without "a clear agenda and direction" (Vol. 1, pp. 11-13).

Germany's position on Turkey's military operations in Syria offers another example. In 2019, after Turkey's military incursion into north-eastern Syria, Germany emphasized the need to respect Syria's sovereignty and warned of potential humanitarian consequences. However, at least initially, Germany did not declare the operation illegal, instead choosing the carefully diplomatic language of "illegitimacy". By condemning the invasion in a "roundabout way", Talmon points out, Germany shielded an ally from direct legal criticism (Vol. 1, pp. 341-346).

GPIL also identifies cases of selective application of legal rules. A case study on Ukraine's adoption of a law on ensuring "the functioning of Ukrainian as the State language" and its impacts on the Russian-speaking minority, calls Germany's interpretation of what constitutes a "threat to international peace and security" restrictive and variable depending on political circumstances ("when it suits") (Vol. 1, pp. 306-308). This double standard becomes evident when compared with Germany's broad invocation of the concept of threat to the peace in relation to the situation of Burundi (Vol. 1, p. 405).

Germany's handling of the legal status of the 2015 Iran nuclear deal (JCPoA) provides another telling example. For years, Germany avoided explicitly stating whether the JCPoA was a treaty or a political agreement. German officials treated the deal as if it created firm international obligations, urging compliance and portraying the JCPoA as an international commitment. However, as Talmon notes, only in 2020 — after the US withdrawal and the deal's effective collapse — Germany publicly acknowledged that the JCPoA was "a political agreement, and not an international treaty". Talmon critiques this delayed clarification, suggesting that the initial ambiguity served political convenience, allowing Germany to confer on the agreement a quasi-legal authority in a way that risks undermining the credibility of international law itself. In the words of Talmon: "the legitimate political end does not justify the twisting of international law" (Vol. 2, pp. 2-7).

Talmon also critiques Germany's characterization of UN Security Council Resolution 2510 (2020) on the Libyan conflict. Germany presented the resolution as transforming the political conclusions of the Berlin Conference into legal obligations for the Libyan parties. However, as Talmon points out, Resolution 2510 merely "welcomed" the Berlin Conclusions and "called upon" the parties to adhere to a ceasefire — language that, under established UN practice, does not create obligations. By suggesting that the resolution had converted political

commitments into enforceable legal duties, Germany raised false expectations and blurred the distinction between political persuasion and legal obligation. In essence, “[p]ortraying a resolution as creating binding legal obligations, which it clearly does not, is at best an act of self-delusion and at worst an act undermining the credibility of international law” (Vol. 2, pp. 265-268). Similarly, Germany’s condemnation of US landmine policy is faulted for lacking a solid legal basis, relying mainly on humanitarian and political arguments (Vol. 2, pp. 391-393). Talmon’s analysis highlights how such mischaracterizations can weaken the credibility of international law by politicizing its authority. Along similar lines, in territorial disputes, Talmon points to Germany’s softening of its earlier, clearer legal stance on Nagorno-Karabakh as a politically motivated shift “which undermines the force of international law” (Vol. 2, pp. 19-23). In another case, commenting upon the UK’s breach of the Brexit Withdrawal Agreement, which was characterized by the British government as occurring “in a very specific and limited way”, Talmon recalls that also Chancellor Schmidt’s government in the 1970s had approved a secret policy of violating the Articles of Agreement of the International Monetary Fund. As Talmon puts it: “The nonchalance with which international law is treated is shocking”. The author concludes that a State should not lecture others on legal compliance if its own record is questionable — a lesson on the need to maintain credibility and avoid hypocrisy (Vol. 2, pp. 116-118).

GPIL occasionally criticizes the German government for inaction, which renders some international positions essentially declaratory. In the case of Israeli settlements, for instance, while Germany reaffirmed their illegality under international law on multiple occasions, Talmon and Craven note that it has consistently refrained from taking concrete action, such as sanctions, revealing a gap between legal rhetoric and enforcement (Vol. 2, pp. 370-377).

The GPIL team is clear in its criticism of the selective use of international law in the case of the Turkish government seismic survey in the Mediterranean. It accuses Germany of politically motivated, strategic use of international law in the absence of a clear legal basis, particularly by calling on Turkey to “respect international law” without directly accusing Turkey of violations (Vol. 2, pp. 204-208, 205). Other cases are used to highlight the absence of any legal argument in Germany’s political condemnations. A case in point is the German government’s reaction to the Iranian missile attacks on US military forces in Iraq in retaliation for the US killing of General Qasem Soleimani, which did not address the broader *ius ad bellum* context and is considered “purely political” (Vol. 2, p. 358). Germany’s statements about the foreign troop presence in Syria draw similar criticism for adopting a restrictive interpretation

of the concept of occupation, undermining the protective force of international humanitarian law for political reasons (Vol. 2, pp. 365-367).

Further critical observations are directed at Germany's tenure on the UN Security Council. The relevant case studies show that Russia (Vol. 2, pp. 294-318) and China (Vol. 2, pp. 319-327) accused Germany of politicizing the Council, and Talmon highlights that Germany's Permanent Representative, Ambassador Heusgen, adopted an unusually confrontational tone. Talmon's criticism is subtle: he acknowledges that German statements "show a genuine concern for, and a principled approach to, international law", but warns that "it may also be questioned whether the confrontational, emotional and judgemental style employed helped in any way to rectify the identified violations of international law" (Vol. 2, p. 337). Heusgen's approach, in other words, may have further alienated major powers and undermined the Council's credibility.

Talmon's overall assessment, however, is not solely negative. In notable instances he praises Germany's principled defense of international law. Germany's condemnation of Israeli plans to annex parts of the Occupied Palestinian Territories, for example, is highlighted for both its legal firmness and its consistency with Germany's historical positions (Vol. 2, pp. 27-33). Similarly, in a doctrinally substantiated piece which is a pleasure to read, Talmon and Lobo recognise Germany's condemnation of Russia's policy of granting citizenship *en masse* to residents of Donetsk and Luhansk (the so-called "passportisation" policy) as a principled stand in defence of Ukraine's sovereignty, firmly grounded in international legal norms (Vol. 1, pp. 38-45).

The initial volumes of the GPIL project showcase a number of clear strengths as a model for documenting State practice. First and foremost is their comprehensiveness: all significant facets of Germany's international law involvement in a year seem to be covered. The fact that GPIL spans topics from air and space law to use of force demonstrates an ambition to leave no relevant occurrence unrecorded. The systematic nature is indeed a strength – one can find practice on minor topics (e.g. the legal status of Antarctica) alongside major ones (e.g. positions on treaty law), all classified under a relevant heading. For researchers, these well-chosen selections save precious time – instead of combing through dozens of press releases or meeting records, one can rely on GPIL to have identified what was noteworthy and why. Another strength is the combination of primary sources with expert analysis. Practitioners may come for primary source citations, whereas scholars may come for the insightful commentary on how these fit into international law debates. The publisher's description rightly notes that the book is an "ideal complement to other compilations of international law practice" – indeed, it

complements official sources by adding analysis and complements academic writing by adding raw State practice materials. Compared to older digests, prone to appear years later in yearbooks, GPIL's model ensures that information is not stale. Finally, the academic perspective GPIL provides, which highlights Germany's contributions to international law along with its contradictions or errors, is what makes the work intellectually rigorous and magnificently independent.

Of course, no model is without challenges. One practical shortcoming of GPIL as a resource is that the volumes are expensive, with a cost of around 200 euros for the hardcover, meaning that individual researchers may have to rely on library copies and some may not have access. The expense is partly justified by the volumes' size and the academic publisher model, but it contrasts with the free availability of the Digest of US Practice and the fact that UK, French and Italian practice appear in periodicals many institutions already subscribe to. This is mitigated by the fact the blog content is free; however, in some contexts, the blog is not as easily citable as a formal book. Another potential issue is that maintaining such a comprehensive digest is labor-intensive and dependent on a relatively small team. As volumes continue, ensuring consistent quality and coverage could be a challenge – especially if funding or student assistance fluctuates. Other State practice digests have struggled in the past due to the sheer workload. The first two volumes of GPIL set a high standard, and sustaining this annually could require broader backing, perhaps from German institutions or international grants, to ensure its longevity. It will be crucial, however, to establish a financial model that preserves the project's independence.

Another methodological issue that could be raised is selection bias. Even with 75-80 case studies per year, the editors must decide what constitutes a significant case to be included, and some judgement calls will necessarily be made. Some minor instances of practice may not have been captured in GPIL because they were deemed insignificant or redundant. Routine treaty depositary notifications and small-scale military cooperation activities, for example, might not be included, even though they, too, form part of State practice. However, given the exhaustive breadth of the two existing volumes, this is a minor concern.

On balance, the strengths of the GPIL model far outweigh its few limitations. It has been highly praised by reviewers in the *British Yearbook of International Law*, the *Chinese Journal of International Law*, the *European Journal of International Law*, *International and Comparative Law Quarterly*, and the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*: all confirm that the commentary and coverage make it a standout resource.

GPIL's volumes for 2019 and 2020 provide a template for how other countries' practice should be documented: comprehensively, promptly, and with academic rigor. In an era when international law is under strain, having a clear record of how a key State acts and what legal positions it espouses is invaluable. Furthermore, at a time when academic freedom is also under increasing pressure, Talmon's work stands as a testament to what scholars should do: preserve their independence, uphold the values of critical inquiry, and serve as an authoritative, *pro veritate* voice capable of guiding — and when necessary criticizing — decision-makers. GPIL's engagement with State practice reflects a commitment to defending the credibility of international law, reminding us that its authority rests not only on State consent but also on the application of its norms. The project thus contributes to the tradition of State practice digests in an innovative way, combining online reporting with annual consolidation and blending documentation with scholarly critique. These first volumes remind us that international law lives in the practice of States, and that capturing this practice with discernment is a scholarly enterprise of great significance — one that, at its best, also speaks truth to power.

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