

RECENT BOOKS ON INTERNATIONAL LAW

EDITED BY RICHARD B. BILDER

REVIEW ESSAY

POST-SOVIET RUSSIAN DOCTRINAL WRITINGS: AN OVERVIEW

Two decades have elapsed since the former Union of Soviet Socialist Republics (USSR) was dissolved by its extant original members in exercise of their rights under the law of treaties.¹ The principal changes of direction in doctrinal approaches and major works produced by Russian international lawyers in the Russian Federation (Russia) are considered here, and developments in the other eleven independent states are reserved for another occasion. The term *works* for these purposes refers to treatises and major monographs; articles are not generally included because the traditional Russian brevity of secondary periodical literature and economies of space, even in the more plentiful post-Soviet days, make writing a seminal article unlikely. Also reserved for separate treatment are books on European law in its broadest sense: the European Union, Council of Europe, European Convention and Court on Human Rights, European ecological law, and what the Russians call European international private law, a dimension of international law that has received much attention in Russian writing. For the most part, Russian legal doctrine treats the European Union as a subject of international law established by treaty, downplaying, perhaps, the supranational, or potentially supranational, dimensions of developments in Europe.

¹ Belarus, Russia, and Ukraine denounced the Treaty of the Union of December 30, 1922, in a coordinated set of edicts adopted by their respective supreme soviets or presidiums thereof between December 8–12, 1991.

I. ELEMENTS OF CONTINUITY

The Russian Federation wisely took the position from the outset that Russia was the “legal continuer” and not the “legal successor” of the former Soviet Union. No “succession” transpired with the dissolution of the USSR with respect to Russia. Russia occupies the USSR seat on the United Nations Security Council, assumed responsibility for all debts of the former USSR, and regarded itself as bound by all treaties of the former USSR.

Societies and serials. The same transition might be said of the Soviet Association of International Law, which promptly renamed itself the Russian Association of International Law (RAIL) and retained the same officers (the presidents being G. I. Tunkin (1957–93); A. L. Kolodkin (1993–2010); and A. Ia. Kapustin (2010–present)), premises, staff, and membership. The *Soviet Yearbook of International Law* was renamed the *Russian Yearbook of International Law* and has appeared annually from 1992 to 2011 inclusive,² being, however, published in St. Petersburg, in a smaller format, in a press run of five hundred copies, and with briefer articles. Its existence is due almost entirely to L. N. Galenskaia, a professor who found financial support from a former student.

The Soviet Association of Maritime Law dropped the word “Soviet” after 1991 and continues to operate under that name. (Its president until 2011 was Kolodkin³ (1928–2011), and his successor is V. A. Mednikov.) Its own yearbook

² Some annual volumes are accompanied by a special, extra volume devoted to conference or other thematic papers. These special volumes are commonly missing in most collections and apparently had a distribution different from the usual *Yearbook*.

³ [Editor’s note: The first textual reference to a particular person includes a first name or initials, but only the last name is used in a subsequent reference.]

appears episodically, sometimes combining several years into one volume, and is often a brief affair.

Other journals. In the late days of *perestroika*, the state monopoly on the publication of journals was broken. Literally hundreds of publishing houses were established, including some by law professors who saw an opportunity. Two professors—Iu. A. Tikhomirov (and family) and V. A. Tomsinov—have endured and even prospered in this sideline to their academic activities. Both publish works on international law, among others.

Other international lawyers founded journals as independent publications not associated with any particular society. Among the major titles are *Moskovskii zhurnal mezhdunarodnogo prava* (*Moscow Journal of International Law*), quarterly since 1993, with English language summaries and some full English-language versions of articles; *Mezhdunarodnoe pravo* (*International law*), an intended quarterly that appeared episodically until eventually merging with its Moscow counterpart (or disappearing); *Kazanskii zhurnal mezhdunarodnogo prava* (*Kazan journal of international law*), in journal format but published more or less yearly (four volumes through 2011); the quarterly *Mezhdunarodnoe ugolovnoe pravo i mezhdunarodnaia iustitsiia* (*International criminal law and international justice*); and the recently established *Mezhdunarodnoe pravosudie* (*International justice*), an intended quarterly inaugurated in late 2011 by the Institute of Law and Public Policy in Moscow.

The publishing house Jurist, established in 1993, now issues more than sixty legal journal titles a year, some monthly and others at various intervals up to quarterly. Of these, the following are devoted specially to international law: *Mezhdunarodnoe publichnoe i chastnoe pravo* (*International public and private law*); *Mezhdunarodnoe pravo* (*International law*); *Iurist-mezhdunarodnik* (*International lawyer*); and the quarterly *Mezhdunarodnoe ugolovnoe pravo i mezhdunarodnaia iustitsiia* (*International criminal law and international justice*). The English-language journal *Russian Law: Theory and Practice*, established in 2004 and published twice yearly by Jurist for the Russian Academy of Legal Sciences, contains international legal material in every issue. The

founding editor was W. E. Butler (2004–09), and the present editor is V. S. Belykh.

Law publishers. As noted, the discipline of law was an immediate beneficiary of *perestroika*. A tremendous hunger for law books generated hundreds of titles each year, and public and private international law benefited accordingly. The German publishing house Beck was an early player and upon insolvency was succeeded by Wolters Kluwer, which after a flirtation with insolvency in November 2010 has found its feet again and is a major supporter of international law titles. Other Russian publishers found the financial crises of 1998 and 2008 difficult to navigate; their numbers materially decreased on each occasion.

Legal databases. The legal database market has narrowed to three serious players—Consultant Plus, Garant, and Kodeks—of which the first two dominate the market. The last, in St. Petersburg, has less than 5 percent of the market. Consultant Plus has, at last word, 60–65 percent, and Garant, 35–40 percent. Law firms in Russia use both. Each offers as part of its basic package a section devoted to international law. Updated weekly, each has good coverage of Russian treaties, including those dating from the Soviet era, but neither is exhaustive. Some treaties otherwise unpublished appear in one or both of these databases.

Treaty series. The well-known SDD,⁴ the Soviet hardcover volumes with a distinctive blue binding issued annually for treaties that entered into force, was apparently discontinued about 1992. This reviewer has found no later volumes, although distribution policies may make them not easily available on the market. Therefore, the official treaty gazette is the monthly *Bulleten' mezhdunarodnykh dogovorov* (*Bulletin of international treaties*) published by the Administration of the President of the Russian Federation. Some treaties also appear in the weekly legislative and executive gazette: *Sobranie zakonodatel'stva Rossiiskoi Federatsii* (*Collection of legislation of the Russian Federation*) (1993–present). Departmental treaties are normally published in departmental gazettes, all exceptionally difficult to source.

⁴ SBORNIK DEISTVUIUSHCHIKH DOGOVOROV SSSR [Collection of treaties in force of the USSR] (1924–92) (appearing with some title variations).

Other major documentary series launched during the Soviet era that are not being continued include the annual series of Russian foreign policy documents (which often contained treaty texts)⁵ and the documents on Russian foreign policy of the first three decades of the nineteenth century.⁶ A list of treaties of the Russian Federation ratified or denounced between January 1, 1990, and August 31, 1996, likewise has not been continued or supplemented.⁷

Bibliography. The *Soviet Yearbook of International Law* was a helpful source, but, as noted, no longer exists; the *Russian Yearbook* does not have the space to include bibliographic information. In 2010, RAIL published its first subject-ordered bibliography of writings on international law for the period 1991–2005 in *Mezhdunarodnoe pravo: Bibliografiia 1991–2005* (International law: Bibliography 1991–2005).⁸ Its editors were Galenskaia, G. I. Kurdiukov, and S. V. Bakhin. Entries are based on those gathered by the editors and submissions by members; publications by Russian international lawyers outside Russia are not normally included.

Personalia. In celebration of its fiftieth birthday in 2007 and under Bakhin's editorship, RAIL published three hundred copies of a "Who's Who" of Russian international lawyers, past and present, which was entitled *Biograficheskii slovar' 1957–2007* (Biographical dictionary 1957–2007). A superb resource—based partly on member entries

and partly on specially commissioned biographical entries—it is a model worthy of emulation by other societies.

Collected Works. The departing generation of international lawyers have assembled their best works, articles, and monographs, and reissued them, usually without change, in the form of "Collected Works." The print runs are low, from one hundred copies upward, frequently by provincial publishers, and therefore hard to get. These works are an invaluable repository of material, commonly with biographical detail unavailable elsewhere, long undeservedly forgotten. International lawyers represented in this category of doctrinal writings include S. N. Lebedev,⁹ S. A. Malinin, and A. N. Trainin.¹⁰

Festschriften. Not common, but not unknown in the Soviet era, protégés and students of distinguished international lawyers in the post-Soviet period are presenting *Festschriften* to their teachers and colleagues to mark a jubilee anniversary (65, 70, 75, 80, 85, and 90 years). These articles are usually commissioned. Among the international lawyers so honored are Galenskaia,¹¹ O. N. Khlestov,¹² I. I. Lukashuk,¹³ A. A. Rubanov,¹⁴ and G. P. Zhukov.¹⁵

⁹ S. N. LEBEDEV, *IZBRANNYE TRUDY PO MEZHDUNARODNOMU KOMMERCHESKOMU ARBITRAZHU, PRAVU MEZHDUNARODNOI TORGOVLI, MEZHDUNARODNOMU CHASTNOMU PRAVU, CHASTNOMU MORSKOMU PRAVU* [Selected works on international commercial arbitration, law of international trade, private international law, and private maritime law] (2009).

¹⁰ *IZBRANNYE TRUDY* [Selected works] (N. F. Kuznetsova ed., 2004).

¹¹ *PUBLIC AND PRIVATE INTERNATIONAL LAW: PROBLEMS AND PROSPECTS* (S. V. Bakhin ed., 2007).

¹² *MEZHDUNARODNOE PRAVO I NATSIONAL'NYE INTERESY ROSSIISKOI FEDERATSII* [International law and national interests of the Russian Federation] (A. A. Kovalev & B. L. Zimnenko eds., 2008).

¹³ *INTERNATIONAL LAW OF XXI CENTURY: TO THE 80TH ANNIVERSARY OF PROFESSOR IGOR I. LUKASHUK* (V. Butkevich ed., 2006).

¹⁴ *CHELOVEK I EGO VREMIA: ZHIZN' I RABOTA AVGUSTA RUBANOVA* [Man and his time: life and work of August Rubanov] (O. A. Khazova ed., 2006).

¹⁵ *LIBER AMICORUM HONOURING GENNADY P. ZHUKOV* (A. Ia. Kapustin & A. Kh. Abashidze eds., 2005).

⁵ The last to appear was *VNESHNAIA POLITIKA ROSSII: SBORNIK DOKUMENTOV, 1990–1992* [Foreign policy of Russia: Collected documents, 1990–1992] (O. V. Balkina comp., 1996).

⁶ *VNESHNAIA POLITIKA ROSSII XIX I NACHALA XX VEKA: DOKUMENTY* [Foreign policy of Russia of the XIX and early XX centuries] (A. L. Narochnitskii ed., 1995). Volume 16, the last, dealt with the period October 1828–July 1830.

⁷ This work is indispensable for the period covered. See *PERECHEN' MEZHDUNARODNYKH DOGOVOROV ROSSIISKOI FEDERATSII: S 1 IANV. 1990 PO 31 AVG. 1996 G.* [List of international treaties of the Russian Federation ratified or denounced by the Russian Federation: From 1 January 1990 to 31 August 1996] (1997).

⁸ This volume follows three bibliographies for the Soviet era from 1917 to 1990, published respectively in 1976, 1987, and 1992 under the editorship of the late professor D. I. Feldman.

Readings. A distinctively Russian tradition and name, “Readings” are usually held at intervals of at least a year and sometimes several, are named in honor of a particular individual, last from a half day to a full day, and consist of a series of substantial scholarly papers delivered by invited speakers on subject matter of their choice or devoted to a specific theme or the honoree of the Readings. The Tunkin Readings were inaugurated in 2010 and held again in 2011 at Moscow Lomonosov State University; the Martens Readings, named for the Russian jurist F. F. Martens (1845–1909) and devoted to the law of armed conflict, have been held at St. Petersburg for several years with support from the International Red Cross.

II. DOCTRINAL WRITINGS

Major textbooks and treatises. Public international law is a required course during the third year of all accredited Russian law schools and taught in many other degree programs. There continues to be an accepted syllabus, although law schools enjoy more freedom in varying the syllabus than was the case during the Soviet era. Russian students enjoy an embarrassment of riches in choosing their basic textbook. Several are excellent. In this reviewer’s opinion, the best remains the work edited by the late V. I. Kuznetsov (1940–2002) and B. R. Tuzmukhamedov, *Mezhdunarodnoe pravo* (International law) (2007),¹⁶ produced by a team of nineteen authors who cannot be brought together again. All copies have sold out. Other textbooks notable for their imaginative departure from the norm include V. Tolstik, *Mezhdunarodnoe pravo* (International law) (2010), a younger writer of independent views. The general weakness of all Russian textbooks is their comparative neglect of Russian state practice. As for a fully fledged treatise on international law, none has appeared in the post-Soviet period. The monu-

¹⁶ For the English language version, see V. I. KUZNETSOV & B. R. TUZMUKHAMEDOV, INTERNATIONAL LAW—A RUSSIAN INTRODUCTION (William E. Butler ed. & trans., 2009).

mental seven-volume edition of the late Soviet era is still frequently cited.¹⁷

History of international law. Russian international lawyers have been neglectful of the history of international law generally and their own in particular. The leading treatise of the history of international law in Russia from 1647 to 1917, by V. E. Grabar (1865–1956), was reissued, with emendations drawn from the Oxford University Press translation, by Zertsalo Publishers in an edition of five hundred copies with a new introduction by this reviewer.¹⁸ A Ukrainian scholar, O. V. Butkevich, has published in St. Petersburg a synopsis of her three treatises on international legal history, *U istokov mezhdunarodnogo prava* (At the sources of international law) (2008). G. S. Starodubtsev produced a good account of the contributions of Russian émigré international lawyers between 1917 and 1939.¹⁹ The late professor V. V. Pustogarov wrote the first biography of Martens with access to diplomatic archives and Martens’s own diary.²⁰

A major contribution is being made, albeit more slowly than might be expected, by reviving—through reprints—the classic works on international law of the pre-1917 era. Zertsalo Publishers has reissued Martens’s two-volume treatise; L. A. Kamarovskii (1846–1912) on the international court;²¹ P. P. Shafirov’s treatise on

¹⁷ KURS MEZHDUNARODNOGO PRAVA V SEMI TOMAKH [Course of international law in seven volumes] (V. N. Kudriavtsev et al. eds., 1989–93).

¹⁸ V. E. GRABAR, MATERIALY K ISTORII LITERATURY MEZHDUNARODNOGO PRAVA V ROSSII (1647–1917) [Materials on the history of the literature of international law in Russia (1647–1917)] (W. E. Butler ed., 2005).

¹⁹ G. S. STARODUBTSEV, MEZHDUNARODNOPRAVOVAIA NAUKA ROSSIISKOI EMIGRATSII [International law science of the Russian emigration] (2000).

²⁰ V. V. PUSTOGAROV, “. . . S PAL’MOI VET’VIU MIRA.” F. F. MARTENS—IURIST, DIPLOMAT, PUBLICIST [“. . . With the palm branch of peace”: F. F. Martens—jurist, diplomat, publicist] (1993). (The English version is entitled OUR MARTENS: F. F. MARTENS, INTERNATIONAL LAWYER AND ARCHITECT OF PEACE (W. E. Butler ed. & trans., 2000).)

²¹ L. A. KAMAROVSKII, O MEZHDUNARODNOM SUDE [On an international court] (L. N. Shestakov ed., 2007).

the Northern War;²² F. I. Kozhevnikov's account of the Russian contribution to international law;²³ and, as noted elsewhere in this article, works by Grabar, A. N. Talalaev (1928–2001), and Tunkin (1906–93), mostly with substantial introductions based on archival research. RAIL, together with the Russian Academy of Justice, established a series entitled “Golden Fund of the Russian Science of International Law,” reproducing so far seven works of well-known authors (M. I. Brun, T. M. Iablochkov, N. P. Ivanov, D. I. Kachevovskii, M. N. Kapustin, N. M. Korkunov, and V. A. Ulianitskii) in three volumes with lightweight introductions. So few have been republished; so many remain to be done.

Theory of international law. The theory of the concordant wills of states as articulated by Tunkin continues to dominate in Russian legal doctrine. No one has proposed an alternative theory to replace that of Tunkin, although emendations have been proposed in a massive two-volume treatise by S. V. Chernichenko, *Teoriia mezhdunarodnogo prava* (Theory of international law) (1999). Tunkin's treatise has been reprinted several times under the editorship of the late L. N. Shestakov (1937–2010). Tunkin's four Hague lectures, introduced by the recollections of his son and accompanied by his diary, are expected in 2012 from Eleven Publishers in Utrecht.

International law and municipal law. Long neglected in Soviet doctrine, the field has been impressively mastered and monopolized by B. L. Zimnenko, whose searches in the court archives have elevated him to a class of his own among his colleagues. Several monographs have appeared, one building upon the other, ultimately synthesized by Zimnenko in a two-volume set, *Mezhdunarodnoe pravo i pravovaia sistema Rossiiskoi Federatsii* (International law and the legal system of the Russian Federation) (2010).²⁴

²² P. P. SHAFIROV, *RASSUZHDENIE, KAKIE ZAKONNYE PRICHINY PETR I . . .* [Discourse on what legal reasons Peter I had . . .] (W. E. Butler ed., 2008).

²³ F. I. KOZHEVNIKOV, *RUSSKOE GOSUDARSTVO I MEZHDUNARODNOE PRAVO (DO XX VEKA)* [Russian state and international law (to the XX century)] (L. N. Shestakov ed., 2006).

²⁴ An English translation of his earlier study was published: B. L. ZIMNENKO, *INTERNATIONAL LAW AND*

Territory. One of the better monographs—imaginative and thoughtful—of the post-Soviet period is by S. N. Baburin and entitled *Teritorii gosudarstva: Pravovye i geopoliticheskie problemy* (State territory: Legal and geopolitical problem) (1997).

Legal succession. Three works address the legal problems and strategies involved in the dissolution of the former Soviet Union and ask, each in their own way, whether the outcome might have been otherwise. Published following his death in 1995, B. M. Lazarev's study, *Mozhno li bylo sokhranit' SSSR (pravovoe issledovanie)* (Could the USSR have been preserved? (legal study)) (2002), concentrates on the internal political diplomacy of the period. A purely international legal approach based on considerable archival research was undertaken by P. P. Kremnev, *Raspad SSSR: mezhdunarodno-pravovye problemy* (Dissolution of the USSR: International legal problems) (2005); and *Raspad SSSR i pravopreemstvo gosudarstv* (Dissolution of the USSR and legal succession of states) (2012).

State immunity. In post-Soviet Russia, the fate of Soviet doctrines of absolute immunity remains important. A federal law on state immunity, anticipated for many years pursuant to the Russian Civil Code, has failed to appear. Two excellent works by Russian jurists address the subject and analyze Russian state practice. The first, by Ekaterina Bykhovskaya, is based on her PhD dissertation at the University of Essex and the Moscow Higher School of Social and Economic Sciences. Unprecedented in its comprehensive analysis of Russian legislation and treaties, her conclusion is that Russia talked absolute immunity but in practice pursued a flexible policy.²⁵ The second, by N. A. Shebanova, has extended the analysis to property of the Russian Federation abroad.²⁶

THE RUSSIAN LEGAL SYSTEM (W. E. Butler trans., 2007).

²⁵ E. BYKHOVSKAYA, *STATE IMMUNITY IN RUSSIAN PERSPECTIVE* (2008).

²⁶ N. A. SHEBANOVA, *SOBSTVENNOST' ROSSIISKOI FEDERATSII ZA RUBEZHOM: PRAVOVOE REGULIROVANIE I ZASHCHITA* [Ownership of the Russian Federation abroad: legal regulation and protection] (2010).

Recognition. No works worthy of mention have transpired in the post-Soviet era, although one wonders if the independence of Abkhazia and South Ossetia may set something in motion.

Law of the Sea. As the leading maritime power among the states that have ratified the 1982 United Nations Convention on the Law of the Sea, the Russian Federation has modernized its relevant state legislation to bring it into conformity with the Convention. Surprisingly, little doctrinal writing on the subject has occurred following the ratification formalities of the Convention. The leading treatise by far is by Kolodkin and colleagues, *Mirovoi okean: mezhdunarodno-pravovoi rezhim* (The world ocean: International legal regime) (2007).²⁷

Similarly, private maritime law has received little attention. An excellent commentary exists on the Code of Merchant Shipping of the Russian Federation²⁸ but not much else in the way of textbook literature, and even that seems rather humdrum. The legal regime of fishing at sea is addressed in K. A. Bekiashev, *Morsakoe rybolovnoe pravo* (Maritime fishing law) (2001). The legal regime of individual seas (Azov, Baltic, Barents, Bering, Black, Caspian, and others) has generated a few articles, but nothing particularly noteworthy.

Polar regions. Although the Russian Federation has opened the Northern Sea Route to international shipping and although considerable gas and oil exploitation on the Arctic continental shelf north of Russia has begun, the legal regime of these spaces continues to be sensitive. The best monograph on the area was devoted to Spitsbergen, the Russian version of which appeared in an exceptionally limited edition.²⁹ Nothing of conse-

quence has been published by Russian authors on Antarctica in the post-Soviet era.

Air and space law. Space law has atrophied in the doctrinal literature, but air law has been treated comprehensively and authoritatively by V. D. Bordunov, *Mezhdunarodnoe vozdušnoe pravo* (International air law) (2007).

Law of Treaties. The major treatise on the law of treaties by Talalaev appeared during the Soviet era in three volumes (1980–89) and has been reprinted as a two-volume set (2011).³⁰ Read together with Lukashuk's two-volume set, *Sovremennoe pravo mezhdunarodnykh dogovorov* (Contemporary law of international treaties) (2004–06), and Talalaev's *Venskaia konventsia o prave mezhdunarodnykh dogovorov. Kommentarii* (Vienna Convention on the Law of Treaties. Commentary) (1997), the Russian international legal community is well supplied with excellent resources on the law of treaties.

Diplomatic and consular law. No major studies have been published in this field in the post-Soviet era. Soviet legislation on the legal status of foreign diplomatic missions in Russia remains in force. The USSR Consular Statute of 1976 was not replaced until 2010.

State responsibility. One comprehensive book stands out in a slim corpus of work: I. I. Lukashuk, *Pravo mezhdunarodnoi otvetstvennosti* (Law of international responsibility) (2004). Useful, albeit specialized, is A. I. Ioirysh, O. A. Supataeva, and A. B. Choporniak, *Otvettvennosti za iadernyi ushcherb* (Responsibility for nuclear damage) (1993).

Human rights law. The monographic literature is immense but undistinguished. An important early post-Soviet contribution is by Boris Nazarov and others, *Prava chesloveka: Istoriia, teoriia i praktika: Posobie* (Human rights: History, theory and practice) (1995). Russian jurists debate the domestic effect of decisions of the European Court for Human Rights. All of the relevant case reports that concern Russia, and many of those that do not, are regularly translated in serial publications and made available inexpensively.

²⁷ A. L. KOLODKIN, V. N. GUTSULIAK & IU. V. BOBROVA, *THE WORLD OCEAN—INTERNATIONAL LEGAL REGIME* (W. E. Butler trans., 2010).

²⁸ *KODEKS TORGOVOGO MOREPLAVANIIA ROSSIISKOI FEDERATSII* [Code of Merchant Shipping of the Russian Federation] (G. G. Ivanov ed., 2000; 2d ed. 2005).

²⁹ A. N. VYLEGZHANIN & V. K. ZILANOV, *SHPITSBERGEN* (2006); *SPITZBERGEN: LEGAL REGIME OF ADJACENT MARINE AREAS* (W. E. Butler ed. & trans., 2007).

³⁰ A. N. TALALAEV, *PRAVO MEZHDUNARODNYKH DOGOVOROV* [Law of international treaties] (L. N. Shestakov ed., 2011) (two-volume set).

Environmental Law. As in the case of the law of the sea, the number of publications on international environmental or ecological law has slackened in the post-Soviet era. There is nothing of special merit. During the Soviet era, environmental protection was a priority of the Communist Party. With its demise, no other political party has espoused the environment with fervor; the NGOs are weak, and the market economy has been less sympathetic to ecological considerations than was, in some respects at least, the Planned Economy.

Humanitarian Law. Although recognized as a branch of contemporary international law in Russian doctrinal writings and the subject of minor dissertation-based monographs, state practice in this domain has received little attention from Russian international lawyers.

Law of Armed Conflict. Presumably there are internal classified manuals that guide the armed forces of the Russian Federation in these matters: nothing of consequence has been produced by Russian international lawyers for general consumption. Some of the International Red Cross commentaries on the Geneva Conventions of 1949 have been translated into Russian.

Peaceful Settlement of Disputes. Some minor monographs exist in this domain, mostly devoted to the International Court of Justice, yet nothing noteworthy or original.

III. PRIVATE INTERNATIONAL LAW

With the transition to a market economy in the Russian Federation, the interest in private international law has increased exponentially. During RAIL's annual meetings, the one full day devoted to private international law is perhaps better attended than the sessions on public international law. Literally a juridical backwater under threat in the Soviet era, the survival of the field owes much to Tunkin's patronage, M. M. Boguslavskii's publications,³¹ and the realism in the Academy of Foreign Trade during the Soviet era, where private international law was taught as a form of continuing legal education for foreign-trade personnel.

³¹ Boguslavskii has written an excellent autobiography, *SVIDETEL' EPOKHI* [Witness of an era] (2008).

Journals. The *Zhurnal chastnogo mezhdunarodnogo prava* (Journal of private international law) is a quarterly published by Galenskaia in St. Petersburg. The entire contents (articles, documents) appear equally in both Russian and English, but the journal is rarely found in foreign collections. As of the end of 2011, seventy-four issues have been published.

Treatises. The three-volume classic by L. A. Lunts on private international law has been reprinted several times and is standard fare for Russian law students.³² It is complemented—and to some extent superseded—by L. P. Anufrieva, *Mezhdunarodnoe chastnoe pravo* (Private international law) (2000–01), a three-volume set that has gone through several revised editions, and a monumental one-volume treatise by N. Iu. Erpyleva, *Mezhdunarodnoe chastnoe pravo* (Private international law) (2011).

Public policy. For comprehensive coverage and analysis, one work stands out: S. V. Krokhaliev, *Kategoriia publichnogo poriadka v mezhdunarodnyi grazhdanskii protsess* (Category of public policy in international civil procedure) (2006).

Enforcement of Foreign Judicial and Arbitral Decisions. Russian legislation requires that the mutual enforcement of foreign judicial decisions be based on a treaty. Within the Commonwealth of Independent States (CIS), there are long-standing treaties that are supported by a substantial body of judicial practice. Russia has few treaties with—and therefore few judicial decisions concerning—non-CIS countries, although a British judicial decision was enforced by a Moscow court that found sufficient reciprocity in the possibility of common-law enforcement of a foreign judicial decision in England.³³ The best Russian treatise is D. V. Litvinskii, *Priznanie inostrannykh sudebnykh reshenii po grazhdanskim delam* (Recognition of foreign judicial decisions in civil cases) (2005). On the enforcement of foreign arbitral awards, B. R. Karabelnikov has made the field his own

³² L. A. LUNTS, *KURS MEZHDUNARODNOGO CHASTNOGO PRAVA V TREKH TOMAKH* [Cours of private international law in three volumes] (2002).

³³ See 1 *RUSSIAN LAW: THEORY AND PRACTICE* 128–36 (W. E. Butler ed. & trans., 2008).

with an excellent survey of Russian judicial practice³⁴ and a commentary on the 1958 New York Convention.³⁵

International arbitration. The post-Soviet era is a renaissance for international and domestic arbitration in Russia. More than six hundred permanent courts of arbitration are registered in the Russian Federation, and this number is known to be low. International arbitration continues to be dominated by the International Commercial Arbitration Court (MKAC, est. 1932) and Maritime Arbitration Commission (MAK, est. 1930). Foreign jurists have been elected to MKAC since 1995, but not yet to MAK. MKAC handles about three hundred arbitral cases a year; as a rule, MAK handles fewer than one hundred. The awards of MKAC are summarized and analyzed by the redoubtable M. G. Rozenberg in a series of volumes under the general title *Praktika mezhdunarodnogo kommercheskogo arbitrazhnogo suda pri TPP RF* (Practice of the international commercial arbitration court attached to the chamber of commerce and industry of the Russian Federation); the MAK awards have finally just been published in two volumes edited by Lebedev and others for the period 1985–2010, *Iz praktiki morskoi arbitrazhnoi kommissii pri torgovoi promyshlennoi palate RF* (From the practice of the maritime arbitration commission attached to the chamber of commerce and industry of the Russian Federation) (2008–10). The Federal Law on International Commercial Arbitration is the subject of an article-by-article commentary.³⁶

³⁴ B. R. KARABELNIKOV, ISPOLNENIE RESHENII MEZHDUNARODNYKH KOMMERCHESKIKH ARBITRAZHNOV [Execution of awards of international commercial arbitral tribunals] (2d ed. 2003).

³⁵ B. R. KARABELNIKOV, PRIZNANIE I PRIVEDENIE V ISPOLNENIE INOSTRANNYKH ARBITRAZHNYKH RESHENII: NAUCHNO-PRAKTICHESKII KOMMENTARIJ K NIU-IORKSKOI KONVENTSIJ 1958 GODA [Recognition and enforcement of foreign arbitral awards: scientific practical commentary on the 1958 New York Convention] (2001).

³⁶ MEZHDUNARODNYI KOMMERCHESKII ARBITRAZH: KOMMENTARIJ ZAKONODATEL'STVA [International commercial arbitration: Commentary on legislation] (A. S. Komarov, S. N. Lebedev & V. A. Musin eds., 2007); see also RUSSIAN PUBLIC LAW 661–64 (W. E. Butler trans., 2d ed. 2009) (translating this federal law).

Two major journals have been devoted to arbitration. Specializing in international arbitration, *Mezhdunarodnyi kommercheskii arbitrazh* (International commercial arbitration) (2004–08), experienced changes of publisher and editorial board before finishing its run; its successor is the *Vestnik mezhdunarodnogo kommercheskogo arbitrazha* (Herald of international commercial arbitration) (2010–present). In St. Petersburg, the journal *Treteiskii sud* (Arbitration court) has appeared since 1999, now six times yearly, and covers both domestic and international arbitration.

IV. CONCLUSION

At one level, the doctrinal writings on public and private international law in Russia are flourishing like never before. The number of Russian jurists seeking lower and higher doctorates (i.e., PhD and LL.D. degrees) in the field is impressively high and represents a substantial increase in comparison to the Soviet era. Many factors are responsible for this increase, including greater contacts between Russian and foreign law schools, the willingness of many younger Russians to seek postgraduate degrees in law abroad, greater opportunities to publish, the accepted importance in Russia of studying European Union law as an integral part of international legal studies, and an even more impressive command of foreign languages among the younger generation of law graduates.

Looking back over the past two decades, however, one also sees the lacunae: the absence of fundamental treatises founded upon Russian state practice either of a general nature or for individual branches of international law (although the law of treaties being well represented and thus an exception); the inclination to produce monographs rather than more major works, whether individual or collective; the preoccupation with introductory textbooks rather than more specialized and detailed studies; the relative absence of commentaries and the complete absence of something analogous to the American Restatements; the neglect of Russian foreign relations law; the lamentable lack of attention to the history of international law in Russia, including revisiting the archives of past state practice; and the absence of major reviews

and discussions of international legal theory—much of what has been discussed in Western international legal circles for the past two decades at this level having been ignored and assuredly not translated into Russian for a local audience.

WILLIAM E. BUTLER
*Dickinson School of Law,
 Pennsylvania State University*

BOOK REVIEWS

The International Law of the Sea. By Donald R. Rothwell and Tim Stephens. Oxford, Portland OR: Hart Publishing, 2010. Pp. xlv, 499. Index. \$55.

General treatises on the law of the sea are not new to international law literature. They include, in English, works written or edited by Myres Smith McDougal and William T. Burke; C. John Colombos; D. P. O'Connell; E. D. Brown; R. R. Churchill and A. V. Lowe; and Louis B. Sohn, Kristen Gustafson Juras, John E. Noyes, and Erik Franckx.¹ Other general treatises include, in French, a handbook edited by René-Jean Dupuy and Daniel Vignes, which is also available in English, and a (still uncompleted) multivolume book by Laurent Lucchini and Michel VoECKEL; in Italian, a short book by Tullio Scovazzi; and in German, a book edited by Wolfgang Graf Vitzthum and Gerhard Hafner.² Consequently, the two Australian authors of the volume reviewed here,

Donald Rothwell, a professor at the Australian National University in Canberra, and Tim Stephens, a senior lecturer at the University of Sydney, had to find space on a ground already occupied by substantial precedents, including, in their own country, the two-volume treatise by the late D. P. O'Connell, completed and updated by Ivan Shearer, today's senior Australian specialist.³ This reviewer would like to state from the outset that Rothwell and Stephens have succeeded in meeting the challenge: although solidly rooted in tradition, their treatise, *The International Law of the Sea*, has a fresh outlook and gives wide exposure to the newest aspects of the subject area.

The UN Convention on the Law of the Sea of 1982 (UNCLOS or Convention)⁴ stands at the center of the book but is far from being its exclusive focus. Indeed, as the authors note, "the international law of the sea was irrevocably transformed" at the conclusion and opening to signature of the Convention (p. vii), but this development does not exempt us from looking backward and, especially, forward. According to the authors, while this "pivotal moment did not completely overturn the legal foundation found in many centuries of state practice, customary international law, decisions of international courts and the writings of publicists[,] . . . the Convention nevertheless pointed the way forward for a new era in the international law of the sea" (*id.*).

The most difficult structural problem facing those who wish to address the law of the sea as a whole is finding an appropriate balance between the examination of the different maritime zones and the particular activities that may take place in more than one maritime zone. For example, is it preferable to consider fisheries in separate sections dealing with the territorial sea, exclusive economic zone, and high seas, or to do so in a single chapter

¹ MYRES SMITH MCDUGAL & WILLIAM T. BURKE, *THE PUBLIC ORDER OF THE OCEANS: A CONTEMPORARY INTERNATIONAL LAW OF THE SEA* (1962); A. PEARCE HIGGINS, *THE INTERNATIONAL LAW OF THE SEA* (C. John Colombos ed., 6th ed. 1967); D. P. O'CONNELL, *THE INTERNATIONAL LAW OF THE SEA* (I. A. Shearer ed., 1982); E. D. BROWN, *INTERNATIONAL LAW OF THE SEA* (1994); R. R. CHURCHILL & A. V. LOWE, *THE LAW OF THE SEA* (3d ed. 1999); LOUIS B. SOHN, KRISTEN GUSTAFSON JURAS, JOHN E. NOYES & ERIK FRANCKX, *LAW OF THE SEA IN A NUTSHELL* (2d ed. 2010).

² *TRAITÉ DU NOUVEAU DROIT DE LA MER* (René-Jean Dupuy & Daniel Vignes eds., 1985); *A HANDBOOK ON THE NEW LAW OF THE SEA* (René-Jean Dupuy & Daniel Vignes eds., 1991) (English version of the same book); LAURENT LUCCHINI & MICHEL

VOECKEL, *DROIT DE LA MER* (1990–96) (multivolume work); TULLIO SCOVAZZI, *ELEMENTI DI DIRITTO INTERNAZIONALE DEL MARE* (3d ed. 2002); *HANDBUCH DES SEERECHTS* (Wolfgang Graf Vitzthum & Gerhard Hafner eds., 2006).

³ O'CONNELL, *supra* note 1.

⁴ United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 UNTS 397 [hereinafter UNCLOS], available at <http://www.un.org/Depts/los/index.htm>.