
Walther Schücking and the Idea of ‘International Organization’

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Abstract

The article concentrates on the core issue of Walther Schücking’s scientific efforts and his literary production as a publicist – the idea of international organization. It begins by situating Schücking’s methodological approach, notably his desire to move beyond legal positivism, before moving on to analyse Schücking’s specific understanding of the notion of international organization. Schücking argued that the general motto ‘peace through law’ should be attained by a ‘republican organization’ of the world and stated that a relevant trend towards a true rule of law on the international level was already on its way. In fact, Schücking went even further and postulated a world confederation ‘Weltstaatenbund’ as the centrepiece of the reform of international law and the key for the realization of all further progress in the field. Having assessed features of Schücking’s reform programme, which he put forward with considerable consistency, the article argues that Schücking is rightly seen as a pioneer who broke new ground in analysing the phenomenon of international organization.

The biography of Walther Schücking displays a very colourful picture of a most industrious legal scholar who in fact had the strong ambition to have an effect on the ‘real world’ outside the academic community. A short glance at the bibliography of Walther Schücking reflects his intent of having an effect on very different addressees. However, on closer inspection, it is immediately clear that – in particular in the years before World War I – Schücking’s scientific efforts as well as his literary production as a publicist very much focused on one core issue: the concept of ‘international organization’.

1 The Philosophical and Methodological Framework

Schücking’s concept can only be understood properly by taking into consideration the general philosophical and methodological orientation of Schücking, who in many of his works reflected on the foundations of his own legal reasoning.

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In particular, Schücking explicitly bore witness to the tradition of German idealism which he claimed to be the ‘heroic era of the cultural history of Germany’.¹ He demanded that the leading intellectuals in Germany should provide for a ‘new era of German idealism’.² Among all the German philosophers who may be subsumed under the broad term ‘idealist’, Schücking felt a particularly close intellectual bond with Immanuel Kant (1724–1804) and consequently stood up for a ‘critical idealism’,³ a qualification which Kant had used to state more precisely his attitude towards idealism. Not surprisingly, Schücking had – in his first years as professor in Marburg (from 1902 onwards) – close academic and personal contact with the Neo-Kantian philosophers Paul Natorp (1854–1924) and Hermann Cohen (1842–1918) who also lectured in Marburg during that period. With reference to Natorp, Schücking claimed that science and politics should enter into close interaction. Science, not just legal science but also economics and history, should be filled with the ideas of real life, just as political life should be filled with the ideas and insights of science.⁴ While science should examine the daily political problems and give clear advice to the public, it should – on this well-founded scientific basis – be possible to solve the political problems on the agenda.⁵ In this context, Schücking expressed his belief that scientists should not simply opt for just any standpoint, but that rather it was the moral obligation for scientists to dedicate their mental gifts to a progressive standpoint.⁶

Turning – on a more specific level – to Schücking’s methodological approach to legal science it can be stated that Schücking accepted that positivist methodological thinking was justified in particular circumstances, in particular with regard to German public law after the foundation of the German Empire in 1871. However, more than 30 years later, Schücking felt the urgent need to deviate from a purely positivist approach. In this context, he acknowledged the pioneering efforts of the German legal philosopher Rudolf Stammler (1856–1938) and the existence of a methodological ‘movement’ among German public law scholars, who at the turn of the century did not want to restrict themselves to the examination of the *lex lata*, but rather to develop new legal norms which better suited the necessities of modern economic life and social conditions.⁷ As protagonists of such legal science which was open to legal policy Schücking mentioned *inter alia* Johann Caspar Bluntschli (1808–1881), Georg Jellinek (1851–1911),⁸ and Anton Menger (1841–1906). Schücking labelled the method of legal policy to which he adhered ‘evolutionist’,⁹ thus using the same

¹ Schücking, ‘*Bertha v. Suttner und die Wissenschaft vom Völkerrecht*’, 16 *Friedens-Warte* (1914) 254.

² Schücking, ‘*Der erste Weltrassenkongress*’, 13 *Friedens-Warte* (1911) 230.

³ Schücking, ‘*Allemagne et le progrès du droit international*’, 1 *Revue Politique Internationale* (1914) 427.

⁴ W. Schücking, *Die wichtigste Aufgabe des Völkerrechts* (1912), at 3.

⁵ W. Schücking, *Das Nationalitätenproblem* (1908), at 6 ff.

⁶ W. Schücking, *Neue Ziele der staatlichen Entwicklung* (1913), at 10 ff.

⁷ Schücking, *supra* note 6, at 7 ff.

⁸ Schücking in particular mentioned G. Jellinek’s *Allgemeine Staatslehre and Verfassungsänderung und Verfassungswandlung* (1906).

⁹ Schücking, *supra* note 3, at 427.

term applied by Franz von Liszt (1851–1919):¹⁰ to him, evolutionist legal scholars were expected to trace the essential normative trends of the present time and to 'project' them – quasi logically – into the future. From the law that has become and from the norms that are in the process of becoming law, the legal scholar must determine the law that will prevail in future.¹¹ According to Schücking, this process of change would have to be embedded in the existing legal reality; this meant that the changes would happen gently, i.e., in an evolutionist process.

With regard to public international law Schücking emphasized the special need of this very young field of law for further development, and concluded that it was particularly important that legal science focused on legal policy and the development of the law. A purely positivist orientation of international legal science was, in Schücking's view, bound to fail when confronted with the problems of the future international order. A good international law expert was characterized by one particular quality, i.e., the power to imagine that international law norms might one day be completely different from today's reality. Schücking almost poetically talked about the legal scholar who should aim at showing ways to lead humanity 'from the marshes of the past to the light heights of the future'.¹² In order to achieve this goal, the scholar should proceed from the standpoint of modern natural law. The acceptance of such a modern natural law was regarded by Schücking as a matter of course. To him, the compatibility of natural law with international practice was evidenced by Article 2 paragraph VIII of the Hague Convention relative to the Establishment of an International Prize Court, according to which the Prize Court should – in the absence of existing positive legal norms – decide on the basis of general principles of equity.¹³

Even more important for the understanding of Schücking's work is his view of the relationship between the traditional science of international law and the modern peace movement. Already in his first publications on the reform of the international order, Schücking acknowledged the achievements of the pacifist movement.¹⁴ He appraised the pacifists' papers as 'indispensable' for any scholar, and expressed his hope that those papers would spread as widely as possible in academic circles. Pacifism and the science of international law should work 'hand in hand' in order appropriately to organize international relations. Schücking's publications on international law are characterized by the insight that pacifism should act as a catalyst for new legal concepts.¹⁵ For Schücking, a true science of international law is unthinkable without clear support for the aims of the peace movement.

¹⁰ Von Liszt, 'Das "richtige Recht" in der Strafgesetzgebung', parts 1 and 2 at 26 *Zeitschrift für die gesamte Strafrechtswissenschaft* (1906) 553 and 27 *Zeitschrift für die gesamte Strafrechtswissenschaft* (1907) 91.

¹¹ W. Schücking, *Organisation der Welt* (1908), at 9.

¹² W. Schücking, *The International Union of the Hague Conferences* (ed. Carnegie Endowment for Peace, 1918), at p. ix.

¹³ Schücking, *supra* note 11, at 8.

¹⁴ Schücking, 'L'organisation internationale', 15 *RGDIP* (1908) 5, at 6 ff.

¹⁵ Schücking, *supra* note 11, at 66; Schücking, *supra* note 12, at 1 ff.

2 Schücking's Concept of International Organization

Schücking's publications in the field of public international law are deeply influenced by the basic assumption that international peace can only be achieved by strengthening the role of law in international relations. Schücking even went so far as to state that 'peace' and 'law' were synonyms.¹⁶ Schücking explicitly extended the pacifying effect of public international law beyond such areas as the law of diplomatic intercourse or the law of armed conflicts (*ius in bello*) to the much more comprehensive question of how to prevent future wars.

A The Republican Organization of States

In considering how the enormous reforms of public international law – which in his view were indispensable – could be achieved, Schücking applied the aforementioned 'evolutionist' technique of legal reasoning. He started out from a thorough historical analysis of the system of international relations and subsequently explored the existing and emerging trends of international law in order to find out what the future of international law might look like.

In applying this evolutionist technique, Schücking went on to state more precisely the very general motto 'peace through law' by claiming that a 'republican organization' of the world should be the aim.¹⁷ This republican organization is characterized by the fact that there is no hegemony of one single state. Rather, the separate states continue to exist, but in the form of a co-existence on the basis of an equality which is governed by a growing number of legal norms. The states create fora of permanent collaboration with independent organs, and in this context solve any possible conflict by way of a peaceful balancing of interests. War would thus cease to be accepted as a natural means of dispute resolution.¹⁸

Schücking derived his conclusion of a relevant trend towards a true rule of law in the sense of a republican organization on the international level from the following observations:

- (i) In his view, the increased economic links between the states, driven by the technical innovations of the age, brought about an 'international solidarity of interests'.¹⁹ The individual national economies were tied together so closely that their fates were inseparably connected with each other. Even if a state should manage to win a war the economic decline in the losing state could have negative economic effects on the winning state that would not be compensated for by the

¹⁶ W. Schücking (ed.), *Die Satzung des Völkerbundes* (3rd edn, 1931), at 51.

¹⁷ For a clear distinction between the strengthening of the role of international relations with the aim of the prevention of war on the one hand and the more extensive concept of 'international organization', cf. Delbrück, "'Das Völkerrecht soll auf einen Föderalismus freier Staaten gegründet sein" – Kant und die Entwicklung internationaler Organisation', in K. Dicke and K.-M. Kodalle (eds), *Republik und Weltbürgerrecht* (1998), at 200, and Czempiel, *Friedensstrategien* (1986), at 64.

¹⁸ Schücking, *supra* note 11, at 59.

¹⁹ Schücking, 'Besprechung von E. Nys, *Droit International*', 14 *Zeitschrift für internationales Privat- und Öffentliches Recht* (1904) 554.

- beneficial effects of winning the war, e.g., obtaining reparation payments from the opponent. War would thus result in a certain loss for both sides.²⁰
- (ii) Short of the question of war, the increased international trade and traffic forced the individual states to intensify their legal relations if they wanted to retain their ability to perform their public functions. Internationalism, i.e., the trend towards an international organization, as a basic legal trend of the late 19th and early 20th centuries, in Schücking's view was particularly evident from the enormous extension of the so-called 'world transport law' ('*Weltverkehrsrecht*', i.e., rules governing the technical and commercial intercourse between nations), i.e., the conclusion of numerous international treaties and the foundation of numerous international unions and associations for various technical purposes.²¹
- (iii) Schücking furthermore pointed to the increased intellectual internationalism that became apparent in his time. While the national idea remained very powerful, the cultural bonds between the different nations had become stronger than at any point in the past centuries. Due to modern communication technology people were taking a much greater interest in events in other countries. In addition, the number of private clubs and associations founded across national borders was increasing, too. Schücking observed that this 'private internationalism' had, in the first decade of the 20th century, become very intense in almost all fields of society.²²

Schücking also took into account the more ethical and humanitarian aspects of the problem of international organization. Only if the individual states joined together to form an organized community of states would they give up the idea of shooting at each other and would it become possible to prevent the dreadful sufferings of modern wars. In light of the increasing world-wide tensions in the final years before 1914, it became more and more difficult for Schücking to talk about a positive trend towards internationalism.²³ The ideal of humanity and the appeal to human insight consequently became more important in Schücking's writings. During the war, the international organization appeared to him to be the ultimate vehicle for the prevention of human suffering in future wars.²⁴ Schücking did not consider the outbreak of the war in 1914 as a refutation of his theses. *E contrario*, he argued that the rule of law must be installed in the international context in order to prevent similar catastrophes in the future.

Finally, a brief comment may be in order on the role of sovereignty in Schücking's concept of international organization: For him, state sovereignty was by no means an obstacle to the perfection of international organization. Schücking interpreted

²⁰ Schücking, 'Besprechung von E. Nys, *Droit International*', 25 *Christliche Welt* (1911) 380.

²¹ Schücking, *supra* note 11, at 61.

²² Schücking, in G. Spiller (ed.), *Mémoires sur le contact des Races communiqués au premier Congrès Universel des Races, tenu à l'Université des Londres du 26 au 29 juillet 1911* (1911), at 428 ff.

²³ Cf. in particular Schücking's lecture on the 'Organisational Significance of the Hague Conferences', held on 15 Mar 1913.

²⁴ W. Schücking, *Der Weltfriedensbund und die Wiedergeburt des Völkerrechts* (1917), at 28 ff.

sovereignty as the unlimited legal capacity of states which – very much like the legal capacity of an adult person under civil law – made sense only if it was used in order to enter into legal contact and legally binding relations with other legal entities.²⁵ In fact, the question of state sovereignty provides particularly clear evidence of the fact that Schücking was not too interested in theoretical debates about the dogmatic basis of international law. In sharp contrast to Carl Schmitt (1888–1985) or Hans Kelsen (1881–1973)²⁶ he focused on the practical side of the matter, i.e., the concrete development of international legal norms.

B The World Confederation

Schücking's work on international organization did not, however, stop there. More specifically, he was convinced that in the early years of the 20th century, the republican organization of states would have to go beyond administrative unions and associations designed to address individual technical and administrative matters, or the establishment of an international court of arbitration. Only the foundation of a comprehensive legal entity which extended to all states as a whole could serve as a prophylaxis against the outbreak of future wars. In order to maintain peace among the various nations the international organization should extend beyond merely technical purposes to political purposes like the development and the protection of international law and the maintenance of world peace. Only such a 'general international organization'²⁷ would guarantee the permanent and close collaboration that could bring about the mutual confidence required to render the outbreak of war less and less probable. Schücking's postulate was a 'Weltstaatenbund', i.e., a confederation of the states of the world, the foundation of which was regarded by him to be the centrepiece of the reform of international law, which in turn would be the key to the realization of all further goals, in particular the implementation of obligatory arbitration and general disarmament.²⁸

Schücking – in the years before World War I – very much focused on the results of the Hague Peace Conferences in 1899 and 1907. In particular, he analysed whether or not it was possible to talk *de lege lata* about an already existing confederation of states: in his early works, in particular in *Die Organisation der Welt*, Schücking concluded that no such union had come into existence, since the periodicity of the conferences from a legal point of view had not yet been ensured. In his *Kultur und Internationalismus* Schücking went one step further: With regard to the preparations for the Third Hague Peace Conference – which in fact was never held – Schücking called this state conference 'the organ of an emerging World Confederation'. In 1911 he was even more enthusiastic and stated that international law was about to lose its specific

²⁵ Schücking, *supra* note 11, at 77 ff.

²⁶ Cf. C. Schmitt, *Politische Theologie – Vier Kapitel zur Lehre von der Souveränität* (1922) and H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* (1920). On Kelsen, see the contributions to the EJIL symposium entitled 'The European Tradition in International Law: Hans Kelsen', 9 EJIL (1998) 287.

²⁷ Schücking, *supra* note 11, at 81.

²⁸ Schücking, 'Modernes Weltbürgertum', *Die Zukunft* (1907) 245.

character and to turn into a set of norms concerning the World Confederation.²⁹ A year later, in one of his most important publications – *Der Staatenverband vom Haag* – Schücking claimed that it was time to enter into a new period of the evaluation of the results of the Hague Peace Conferences. In his view, it was mandatory to concentrate on the organizational value of the Peace Conferences instead of analysing the results with regard to the law of warfare or international arbitration. A very detailed legal and dogmatic examination led Schücking to conclude that, as a consequence of the treaties concluded during the two Hague Peace Conferences, a confederation of states had already come into existence in 1912.

One last issue must be addressed in order fully to explain Schücking's fundamental idea of the necessary intensity of international organization: Schücking was of course well aware of the fact that very often in the past the foundation of a confederation in the course of time had led to the emergence of a federal state. Schücking confessed that, personally, he did not exclude the possibility of a similar development on the international level. With regard to the precedents (USA, Switzerland, Germany) he even felt that such a federal state was in fact desirable. However, Schücking was enough of a realist to concede that in his own time the national feelings of the people were still so strong that a federal state encompassing all nations of the world would be possible only in the remote future.³⁰

C Details of Schücking's Concept of International Organization

Turning to the details of Schücking's concept for the future development of international law, it is most important to state that Schücking's plans included the implementation of a system of maintenance of international peace³¹ in the framework of the prospective World Confederation. Even though Schücking did not publish his ideals about this system and its elements in one single comprehensive work, it is appropriate in fact to talk about the existence of such a system. While Schücking published on the elements of the systems of maintenance of international peace in various journals, newspapers, and other print material in the years between 1907 and 1935, he treated the same topics throughout the years and fought for his ideals with remarkable constancy and without considerable discontinuities. The emphasis of his work may have shifted from time to time, but the structures of argument remained mostly unaltered,

1 Outlawing of War and Peaceful Dispute Resolution

According to Schücking, an effective system of maintenance of peace must as a matter of course include the *prohibition of war* and an *obligatory procedure of peaceful settlement of disputes*.

²⁹ Schücking, *supra* note 12, at 380.

³⁰ Schücking, *supra* note 11, at 81 ff; W. Schücking, *Staatenverband vom Haag* (1912), at 113: 'perhaps in a few centuries'; Schücking maintained his sympathy for an even closer connection of the peoples of the world even after the war: cf. W. Schücking, *Völkerbundsatzung* (1926), at 22 ff.

³¹ Cf. F. Bodendiek, *Walther Schückings Konzeption der internationalen Ordnung* (2001), at 206.

In the years before World War I, Schücking propagated a relative restriction of the *ius ad bellum*, namely by arguing for an obligation of states, in the event of an international conflict, to at least make efforts towards a peaceful settlement of the dispute, but did not postulate a universal guarantee of the territorial integrity of states.³² After the outbreak of the war, Schücking integrated a 'moratorium solution' into his concept of a system of maintenance of peace. Schücking took up a model of conflict prevention that went back to the ideas of the US Secretary of State William Jennings Bryan (1860–1925) who presented an outline to this effect at the 14th Interparliamentary Conference in London in 1906 and implemented the model in various so-called 'Bryan Treaties': bilateral treaties on arbitration concluded between the United States and other nations that included an obligation not to resort to war before an effort for a peaceful settlement of the dispute had been undertaken.³³ During the war, Schücking participated in initiatives of international law experts at the national and international level that propagated a similar solution on a world-wide basis.³⁴ In the years after the war, Schücking followed the legal trend towards a general prohibition of war with great enthusiasm. Both the Geneva Protocol of 1924 and the Briand-Kellogg Pact of 1928 were greeted by him as historical milestones.³⁵

With regard to dispute settlement, a similar development in Schücking's work can be noted. In the years before 1914 Schücking conceded that his ideal of comprehensive obligatory arbitration for all international disputes was a project that could only be realized in the longer term. After the outbreak of the war Schücking's centre of attention shifted to the differentiation between legal disputes on the one hand and mere conflicts of interests or legal disputes that touched the critical interests of a state on the other. Schücking emphasized the importance of creating a special organ for the mediation of such conflicts. In this respect, he acknowledged the important role of his academic teacher Ludwig von Bar (1836–1913), who had underlined the necessity of such a specific organ as early as in 1898, i.e., before the First Hague Peace Conference. Schücking proposed to establish an 'international office for settlement and mediation' as an official organ of the World Confederation. His proposal was in line with various detailed projects which had – even before the outbreak of the war – been developed by international lawyers from other European countries, in particular by Politis (1910) and Efremoff (1912).³⁶

After 1919, Schücking's academic work focused on the approach to non-judiciable conflicts of interests adopted in the Covenant of the League of Nations. To him, Article

³² Cf. Schücking, *Staatenverband*, *supra* note 30, at 286 ff.

³³ Cf. Efremoff, 'La conciliation internationale', 18 *RdC* (1927 III), at 28 ff.

³⁴ Schücking collaborated with Dutch lawyers and pacifists in the elaboration of the *Avant-projet d'un traité général relative au règlement pacifique des conflits internationaux* of the Central Organization for a Durable Peace in Apr. 1915. In addition, he was a leading personality in the drafting process of the draft of the *Deutsche Gesellschaft für Völkerrecht* (German Society for International Law) for the Covenant of the League of Nations.

³⁵ Schücking talked about the Briand-Kellogg Pact as a 'turning point of the history of mankind' and 'the most revolutionary event of the history of modern international law'.

³⁶ Cf. Politis, 'L'Avenir de la médiation', 17 *RGDIP* (1910), 149, and Efremoff, *supra* note 33, at 16.

12 of the Covenant (which envisaged mediation by the Council) marked a definite step forward compared with the normative situation before the war. However, Schücking believed that the Covenant wrongly entrusted the mediation of international conflicts of interests to a political organ, whereas really it ought to be undertaken by an objective and neutral institution. Schücking's comprehensive study *Das völkerrechtliche Institut der Vermittlung*, which explored these ideas in considerable detail, became very influential in the international academic debate due to its wealth of historical material and its expansive reasoning.³⁷ In the following years, Schücking adopted the idea of an 'international equity tribunal' which should find solutions for political conflicts of states *ex aequo et bono*. Schücking was not the originator of the concept, but certainly one of the first and strongest supporters of the idea.³⁸

2 An International Executive

In addition, Schücking stressed the importance of an effective 'international executive' combined with disarmament³⁹ on the national level for the implementation of an effective system of maintenance of peace. As for any other legal order Schücking regarded the existence of effective sanctions for the enforcement of international law as mandatory.⁴⁰ In his earlier writings Schücking did not come forward with detailed proposals for the form of the international executive. He rather referred to the intense academic debate which had begun on the international level before World War I.⁴¹ Schücking in particular expressed his sympathy for the concept of the Dutch international law scholar Cornelius van Vollenhoven (1874–1933) who had proposed as executive organ a naval force under international command that would have consisted of contingents from the individual states.⁴² During and after the war, Schücking continued to express his conviction that the organized community of states, i.e., the World Federation, would have to retain the option of using force against an aggressor state. Schücking in particular clearly distinguished himself from that part of the peace movement that wanted to abolish any kind of military force on the international level, even where this was exercised by

³⁷ Cf. *ibid.*, at 5; J.-P. Cot, *La conciliation internationale* (1968), at 3.

³⁸ The plans for an 'equity tribunal' can be traced back to the ideas of the French author Decencière-Ferrière. cf. 'Quelques réflexions touchant le règlement des conflits internationaux', 36 *RGDIP* (1929) 430, and Lord D. Davies, *The Problem of the Twentieth Century* (1930), at 7 ff. The idea was in addition supported by the New Commonwealth Society: cf. Schwarzenberger, 'What is an Equity Tribunal?', 3 *The New Commonwealth Quarterly* (1934) 194. Schücking was nominated as scientific expert by this society in 1934: cf. 3 *New Commonwealth Quarterly* (1934), 207.

³⁹ Disarmament was certainly a core element of Schücking's system of maintenance of peace. Due to the scope of this brief article reference can be made to Bodendiek, *supra* note 31, at 239 ff.

⁴⁰ Cf. Schücking, *Staatenverband*, *supra* note 30, at 291.

⁴¹ Cf. Bodendiek, *supra* note 31, at 230.

⁴² Van Vollenhoven had proposed his plans at a study congress in Leiden in Sept. 1910: cf. 12 *RDILC* (1911), at 80 ff, and 18 *RGDIP* (1911), at 242 ff. For further details on van Vollenhoven see Rombach, 'Cornelius van Vollenhoven', in H. Josephson (ed.), *Bibliographical Dictionary of Modern Peace Leaders* (1985), at 996 ff.

the international community in order to enforce legal norms or binding decisions of the international organs. In Schücking's academic work, the 'international executive' was not dominant in the first years after World War I, but in one of his last major writings, *Die Organisation der Völkerbundsexekution* of 1932, Schücking dealt extensively with the deficiencies of Article 16 of the Covenant of the League of Nations.⁴³ In this Article, however, he seemed less optimistic about the feasibility of an international military execution than in earlier years. The set-backs in the development of international law since the Briand-Kellogg Pact had obviously discouraged him to a certain extent.

3 The 'Socialization' of International Law

The aforementioned elements of a comprehensive system for the maintenance of peace must – according to Schücking – be completed by measures to effectuate the peoples' right to self-determination,⁴⁴ by a progressive codification of international law⁴⁵ and the 'socialization' of international law. This last element is an appropriate example of the originality of Schücking's approach. Schücking argued that in order to enhance its relevance, the World Confederation could not be limited to a legal association that eliminated threats to international peace. By contrast, the World Confederation should unite the nations in a peaceful economic and cultural community that struck a balance between the common interest and the particular interests of the individual states.⁴⁶ In his works *Meeresfreiheit gegen Rechtsgarantien* and *Internationale*

⁴³ Schücking wrote the article together with his associates at the Institute of International Law at the University of Kiel, Viktor Böhmert and Curt Rühlend. The article, entitled 'Die Organisation der Völkerbundsexekution gegen den Angreifer', was published at 16 *Zeitschrift für Völkerrecht* (1932) 529.

⁴⁴ Schücking had already in the years before 1914 published on the legal problems of national minorities, although not explicitly from an international law point of view. In particular, in his article 'Das Nationalitätenproblem', published in 20 *Christliche Welt* (1906) 219, he voiced the criticism that in Germany too often the idea of the state and the idea of the nation were regarded as identical, and took a stand for the Polish minority in Prussia. In light of this position, Schücking was in the years after 1918/19 much more credible when he in turn criticized the treatment of German national minorities as a consequence of the treaty of Versailles. In any event, Schücking regarded an appropriate solution of the minority problem as a central element in an effective system of the maintenance of peace.

⁴⁵ For Schücking the codification of international law was the natural consequence of a progressive organization of the community of states, as the lack of written norms led to unbearable uncertainties. As early as 1911 Schücking claimed in a lecture held at the First Universal Congress of Races at the University of London that a total codification of international law was already within reach: see Schücking, *supra* note 22, at 424 ff. Schücking was – along with well-known scholars such as Brierly, Guerrero, Loder, de Visscher, and Wickersham – one of the 17 members of the expert committee of the League of Nations on the Codification of International Law that started its work in Apr. 1925 in Geneva: see S. Rosenne, *League of Nations Committee of Experts for the Progressive Codification of International Law* (1972). In addition, Schücking – along with other scholars like Gidel (France), Erich (Finland), Politis (Greece), Van Eysinga (Netherlands), Hudson (US), Diena (Italy), and de Visscher (Belgium) – took part in the First League of Nations Conference at the Hague in Mar. and Apr. 1930: cf. Liang, 'Le developpement et la codification du droit international', 73 *RdC* (1948 II), 435.

⁴⁶ Cf. Schücking, 'Der wahre Völkerbund', *Berliner Zeitung*, 17 Apr. 1921.

Rechtsgarantien Schücking proposed the international control of the oceans and a 'world colonial office'. In the years after World War I, Schücking developed broader ideas for a socialization of international law, in particular with regard to the international control of immigration and an international anti-trust authority.⁴⁷ Schücking's considerations point to the idea of 'peaceful change' in the sense of an alteration of the international status quo without the use of force – which became a topic of the international legal debate in the 1930s, i.e., after Schücking's death in 1935.⁴⁸

3 Historical Evaluation of Schücking's Role in the Debate about 'International Organization'

It is one particular achievement of Walther Schücking to have collected projects for an international organization that had been developed by other authors in the past. In his account of theoretical reflections on the republican organization of states from earlier centuries, Schücking mentioned – in his *Organisation der Welt* – *inter alia* the outlines of Pierre Dubois, George of Podebrad, Emeric Crucé, the Duke of Sully, Count Ernst of Hessen-Rheinfels, Abbé St. Pierre, Christian Wolff, and Immanuel Kant. While some of these outlines for a new international order, in particular those of Kant and the Abbé St. Pierre, were at the time still referred to by contemporaries, and while Schücking was not the first public international lawyer of his time to collect them,⁴⁹ contemporaries acknowledged the great service Schücking had rendered to science by introducing the projects of international organization to a wider expert audience.

Another characteristic feature of Schücking's writings on international law is – as already shown above – the very positive evaluation of the results of the Hague Peace Conferences: the assessment of these results was very controversial among contemporary legal scholars in Germany. At a first stage, in particular before the beginning of the First Peace Conference in 1899, legal science regarded the plans for a peace conference with much scepticism and did not expect any remarkable results.⁵⁰ At a second stage of the evaluation of the Peace Conferences, in particular in the first years after the turn of the century, German legal science no longer disputed the positive results of the Hague Conferences, but mainly found such positive results in the field of the *ius in bello*, whereas their impact on the field of the prevention of war were not appreciated.⁵¹ In the course of the first decade of the 20th century, the majority of German international lawyers became – at a third stage of the evaluation – convinced

⁴⁷ Cf. W. Schücking, *Der wahre Völkerbund* (1921), and 'Die Entwicklung der Völkerbundorgane in den letzten zehn Jahren', *De Volkenbond* (1930) 118.

⁴⁸ Cf. Grewe, 'Peaceful Change', in R. Bernhardt *et al.* (eds), *Encyclopedia of Public International Law* (1997), iii, at 965 ff.

⁴⁹ In particular pacifists like Alfred Fried reminded readers of those outlines. But also legal scholars like Bluntschli, von Holtzendorff, von Bulmerincq, Schlieff, Roszkowski, and Kohler mentioned the organizational projects from the past in the years between 1878 and 1907, i.e., before Schücking's 'Organisation der Welt'.

⁵⁰ Cf. Bodendiek, *supra* note 31, at 172.

⁵¹ Cf. *ibid.*, at 173.

of the benefits of the Peace Conferences. Under the impression of several successful arbitrations conducted under the auspices of the Permanent Court of Arbitration and the very effective inquiry into the *Dogger Bank* incident, the results of the Hague Conferences in the field of dispute settlement were evaluated in an increasingly positive way.⁵² In the following years (until 1912/1913), after further successful arbitrations (*Casablanca case*, *Carthage and Manouba case*) the German academic community had predominantly come to a positive and constructive attitude towards the results of the Hague Conferences.⁵³ Schücking's thesis concerning the organizational significance of the Hague Peace Conferences, however, was not widely shared by his German contemporaries, who explicitly declined to evaluate the results of the Hague Conferences as the beginning of a World Confederation.⁵⁴ Outside Germany, the organizational significance of the conferences was much more appreciated.⁵⁵ However, it can be summarized that it was pioneering work by Schücking to have assessed the positive norms in the Hague Conventions as an already existing World Confederation. Even where contemporaries did not fully share Schücking's assessment, they considered his findings to be a provocative, but valuable, encouragement to further debate, and discussed them very intensively.⁵⁶

Turning to Schücking's political demands for the further development of the World Confederacy, it has already been underlined that there were numerous precedents of similar plans for a World⁵⁷ Confederation in earlier epochs. For Schücking, Kant's outline *Zum Ewigen Frieden* of 1795 in particular was an important framework of reference, and Schücking to a certain extent used the authority of Kant as a protective shield against the opponents of his plans. There were also a lot of precedents for a World Confederation in the final third of the 19th century. The years between 1870

⁵² In particular Lammasch, von Liszt, Meurer, von Ullmann, Nippold, Laband, and Zorn (who was an active politician for the Conservative Party in the Prussian Parliament) expressed – in the years between 1905 and 1907 – their sympathy for an institutionalization of the international arbitration.

⁵³ Cf. the survey published in 15 *Friedens-Warte* (1913) 290.

⁵⁴ Cf. *ibid.*, at 295 ff. However, there were several renowned scholars who joined Schücking in the positive appraisal of the organizational significance of the conferences, in particular Kohler, von Liszt, and Wehberg.

⁵⁵ Schücking himself made reference to Lawrence and Holls as well as to Scott and Hull.

⁵⁶ In this context it must be emphasized that Schücking was *not* the first German author to use the technical term 'international organization'. The term itself had been used by contemporary German authors since the 1890s, but as a description of the developments in international law in that era, in particular the foundation of international associations. Cf. Preuß, 'Besprechung zu Eugen Schlieff, Friede in Europa', 9 *Archiv des öffentlichen Rechts* (1894) 312, at 314; A. von Bulmerincq, *Das Völkerrecht oder das internationale Recht* (1889), at 192; E. Schlieff, *Friede in Europa* (1892), at 279. The use of the term 'international organization' was – generally speaking – not meant as a description of the development towards a universal Federacy and a consent to Schücking's thesis about the organizational significance of the Hague Conferences. Jellinek, 'Kampf des alten mit dem neuen Recht' (1907), in G. Jellinek, *Ausgewählte Schriften und Reden* (1911), at 55 ff; Niemeyer, 'Vom Wesen des internationalen Rechts', 20 *Zeitschrift für internationales Recht* (1910) 1; Zorn, 'Das völkerrechtliche Werk der beiden Friedenskonferenzen', 2 *Zeitschrift für Politik* (1909) 327; Nippold, 'Die zweite Haager Friedenskonferenz', 18 *Zeitschrift für internationales Recht* (1908) 199, at 294.

⁵⁷ In the following, the examination of plans for a 'World Confederacy' will include such plans that dealt with European Confederacies.

and 1900 witnessed a true renaissance of plans for a far-reaching international organization in various countries. In particular, the concepts of James Lorimer (1877),⁵⁸ Leonid Kamarowsky (1881),⁵⁹ Leone Levi (1886),⁶⁰ and Pasquale Fiore (1899)⁶¹ deserve to be mentioned in this regard. It is very remarkable and not really understandable that Schücking did *not* make any reference to those projects in his own writings. In Germany, the plans for a World Confederation of Kant and other philosophers belonging to German idealism, in particular Fichte, Schelling, and Karl Friedrich Christian Krause,⁶² had no direct successors.⁶³ The next noteworthy outline of a World Confederacy in the German language dated from 1878 when Bluntschli published his project for a European Confederation.⁶⁴ Not to be forgotten is the project of Eugen Schlieff who published his writing 'Friede in Europa' in 1892.⁶⁵ Schücking made reference to the projects of Bluntschli and Schlieff in his own writings, but was the first legal scholar who formed part of the institutionalized legal community to advance elaborate plans for the international organization.⁶⁶

As we turn to Schücking's ideas for a system for the maintenance of peace, the striking feature is not so much the originality of the individual elements of the system mentioned above.⁶⁷ Even though Schücking's considerations were of great dogmatic intensity, he very often took up the outlines of other scholars and refined them. Schücking's main contribution to the debate must be seen in his combination of the individual single elements of the system of maintenance of peace. This combination seems to be more convincing than the plans for the maintenance of peace invented by other scholars who, in an isolated manner, dealt with individual institutions like arbitration of the international executive. However, it is important to note that Schücking at all times clearly indicated which of his demands for a further development of international organization could be achieved in the nearer future and which of his postulates were longer-term projects. Schücking thus sought to avoid any reproaches of a too optimistic, if not utopian, way of looking at things.

⁵⁸ Lorimer, 'Le problem final du droit international', 8 *RDILC* (1877) 161.

⁵⁹ Kamarowsky, 'De l'idée d'un tribunal international', 15 *RDILC* (1883) 44, a summary of a lecture held in Nov. 1881.

⁶⁰ Reprinted in W.E. Darby, *International Tribunals* (4th edn, 1904), at 216–223.

⁶¹ Fiore, 'L'organisation juridique de la Société internationale', 31 *RDILC* (1899) 105 and 209 (published in two parts).

⁶² Karl Friedrich Christian Krause published his outline of a European Confederacy in 1814.

⁶³ Cf. J. ter Meulen, *Der Gedanke der Internationalen Organisation in seiner Entwicklung* (1940), ii (2), at 127, who states that there were relatively few supporters for the idea of 'international organization' in Germany in the years between 1870 and 1900.

⁶⁴ Cf. Hobe, 'Das Europakonzept Johann Caspar Bluntschlis', 31 *Archiv des Völkerrechts* (1993) 376.

⁶⁵ See also Schlieff, 14 *Archiv des öffentlichen Rechts* (1899) 260.

⁶⁶ A very important source of inspiration for Schücking's plans for a World Confederacy were the ideas of the contemporary pacifist movement. In particular the World Peace Conferences of 1889 and 1892 as well as the World Peace Conferences of 1905 and 1907 dealt in detail with the possibility of a World Confederation. In addition, Schücking received valuable input from the writings of Alfred H. Fried.

⁶⁷ See *supra*, sect 2C.

In conclusion, in his work on international organization, Schücking was definitely a pioneer in the years before World War I. After the foundation of the League of Nations, Schücking remained one of the most important experts in this field. His commentary on the Covenant of the League of Nations, which he published together with his friend Hans Wehberg (1885–1962) in 1921, became the standard work on the topic within Germany and was also regarded as an important authority on the international level.⁶⁸ In addition, Schücking was very active on the national and international levels in various associations dealing with the development of international organization, e.g., the Interparliamentary Union and the Institut de droit international. To conclude, it seems apt to recall the observation by Pitman B. Potter who, reflecting on early 20th century scholarship, noted that ‘Schücking ha[s] been more responsible than anyone else in this critical period for launching and stabilizing in the world of scholarly thought the concept and verbal formula of ‘international organization’.⁶⁹

⁶⁸ Cf. Bodendiek, *supra* note 31, at 107 for further references.

⁶⁹ Potter, ‘The Origin of the Term “International Organization”’, 39 *AJIL* (1945) 803, at 805.