

---

XXXIV

---

POLISH YEARBOOK  
OF INTERNATIONAL LAW

2014

**Board of Editors:**

WŁADYSŁAW CZAPLIŃSKI (Editor-in-Chief)

JAN BARCZ (Member)

ANNA WYROZUMSKA (Member)

KAROLINA WIERCZYŃSKA (Specialist editor)

ŁUKASZ GRUSZCZYŃSKI (Specialist editor)

**International editor:**

BART M.J. SZEWCZYK

**Language editor:**

JAMES HARTZELL

**Statistical editor:**

WOJCIECH TOMASZEWSKI

**Advisory Board:**

MAURIZIO ARCARI

LOUIS BALMOND

JERZY KRANZ

ANDRZEJ MAĆCZYŃSKI

ERNST-ULRICH PETERSMANN

JERZY POCZOBUT

PAVEL ŠTURMA

VILENAS VADAPALAS

ROMAN WIERUSZEWSKI

JERZY ZAJADŁO

ANDREAS ZIMMERMANN

**Cover designed by:**

BOGNA BURSKA

POLISH ACADEMY OF SCIENCES  
INSTITUTE OF LAW STUDIES  
COMMITTEE ON LEGAL SCIENCES

XXXIV  
POLISH YEARBOOK  
OF INTERNATIONAL LAW

2014



Wydawnictwo Naukowe SCHOLAR  
Warsaw 2015

All texts express exclusively personal views of the authors.  
Authors bear full responsibility for statements and opinions expressed  
in the published studies.

© Copyright by Polish Academy of Sciences Institute of Law Studies  
and the Committee on Legal Sciences, Warszawa 2015

PL ISSN 0554-498X  
DOI 10.7420/pyil2014

Wydawnictwo Naukowe Scholar Spółka z o.o.  
ul. Wiślana 8, 00-317 Warszawa  
tel./fax 22 828 93 91, 22 826 59 21, 22 828 41 18  
marketing department: as above, ext. 105, 108  
e-mail: [info@scholar.com.pl](mailto:info@scholar.com.pl)  
[www.scholar.com.pl](http://www.scholar.com.pl)

Printed in Poland

First edition, 250 copies

## CONTENTS

|  |     |
|--|-----|
| IN MEMORIAM.....   | 9   |
| <b>Jan Kolasa</b>  |     |
| Karol Wolfke (1915-2015) .....   | 11  |
| <b>Jerzy Kranz</b>   |     |
| <i>Sapere auso</i> (To One Who Dared to Be Wise): On the Fifth Anniversary<br>of the Death of Krzysztof Skubiszewski .....               | 17  |
| LEGAL PERSPECTIVES ON THE UKRAINIAN-RUSSIAN CONFLICT .....   | 37  |
| <b>Patrycja Grzebyk</b>  |     |
| Classification of the Conflict between Ukraine and Russia in International Law<br>( <i>Ius ad Bellum</i> and <i>Ius in Bello</i> ) ..... | 39  |
| <b>Natalia Cwicinskaja</b>   |     |
| The Legality and Certain Legal Consequences of the “Accession” of Crimea to<br>the Russian Federation .....                              | 61  |
| <b>Thomas D. Grant</b>   |     |
| The Budapest Memorandum of 5 December 1994: Political Engagement<br>or Legal Obligation? .....   | 89  |
| <b>René Värk</b>   |     |
| The Advisory Opinion on Kosovo’s Declaration of Independence:<br>Hopes, Disappointments and Its Relevance to Crimea .....                | 115 |
| GENERAL ARTICLES .....   | 133 |
| <b>Koen Lenaerts</b>   |     |
| EU Values and Constitutional Pluralism: The EU System of Fundamental<br>Rights Protection.....   | 135 |
| <b>Aleksandra Gliszczyńska-Grabias</b>   |     |
| Memory Laws or Memory Loss? Europe in Search of Its Historical Identity<br>through the National and International Law .....              | 161 |

**Hanna Kuczyńska**

Selection of Defendants before the ICC: Between the Principle of Opportunism and Legalism ..... 187

**Magdalena Słok-Wódkowska**

National Treatment Rules in EU Regional Trade Agreements ..... 225

**Magdalena Silska**

Protection of Internally Displaced Persons: An International Legal Obligation?..... 249

POLISH PRACTICE OF INTERNATIONAL LAW..... 273

The Opinion by the Legal Advisory Committee to the Minister of Foreign Affairs of the Republic of Poland on the Annexation of the Crimean Peninsula to the Russian Federation in Light of International Law ..... 275

**Szymon Zaręba**

Treaty Interpretation by the Polish Administrative Courts: A Case Study of the Interpretation of the 1972 Prague Convention ..... 285

BOOK REVIEWS ..... 303

**Cezary Mik**

Lukasz Gruszczyński, Wouter Werner (eds.), *Deference in International Courts and Tribunals: Standard of Review and Margin of Appreciation*..... 305

**Bartłomiej Krzan**

Vesselin Popovski, Trudy Fraser (eds.), *The Security Council as Global Legislator* ..... 309

**Bartłomiej Krzan**

Robert Kolb, *The International Court of Justice*..... 313

**Andrzej Jakubowski**

Lilian Richieri Hanania (ed.), *Cultural Diversity in International Law*..... 318

**Michał Balcerzak**

Ryan Goodman, Derek Jinks, *Socializing States: Promoting Human Rights through International Law* ..... 323

POLISH BIBLIOGRAPHY OF INTERNATIONAL AND EUROPEAN LAW 2014 ..... 329

## *Dear Readers,*

We are delighted to present you with the new volume of the Polish Yearbook of International Law for the year 2014. The volume is divided into six parts including our traditional sections such as the Polish practice in international law, Polish bibliography in international and European law, and book reviews.

The first section (In memoriam) is devoted to two eminent scholars who left us recently. We pay the tribute to professor Karol Wolfke, an “outstanding scholar and teacher, (...) a good and honest man, as well as a loyal friend”, who died in March 2015 (text by prof. Jan Kolasa), and to one of the most renowned Polish scholars and diplomats, professor Krzysztof Skubiszewski, who passed away five years ago (text by prof. Jerzy Kranz).

The second section is dedicated to the Ukrainian-Russian conflict and analyses various legal issues that have emerged in the context of the developments that have been taking place in Eastern and Southern Ukraine over last year and a half. Our contributing authors focus on the classification of the conflict between Ukraine and Russia, taking into account the traditional categories of international law of *Ius ad Bellum* and *Ius in Bello* (article by Patrycja Grzebyk), as well as the legal consequences of the annexation of the Crimean Peninsula (article by Natalia Cwicinskaja). Thomas D. Grant provides us with in-depth legal analysis of the Budapest Memorandum of 5 December 1994, while René Värk considers the Advisory Opinion on Kosovo’s Declaration of Independence and its relevance to Russia’s annexation of Crimea. This section is supplemented by the document of the Legal Advisory Committee to the Minister of Foreign Affairs of the Republic of Poland on Annexation of the Crimean Peninsula to the Russian Federation in light of international law, which is included in our section on the Polish practice.

The third section includes other articles not connected with the leading topic of this issue. In particular, Judge Koen Lenaerts presents an analysis of the EU system in the context of fundamental rights protection, taking into account EU values and constitutional pluralism, and Magdalena Słok-Wódkowska discusses the national treatment rules in the EU regional trade agreements, while Aleksandra Gliszczyńska-Grabias takes a closer look at the controversies relating to memory laws in contemporary Europe. In another article, Hanna Kuczyńska analyses questions concerning international criminal law with respect to the selection of defendants before the International Criminal Court. The section closes with the text of Magdalena Silska on the international regulation, or lack thereof, of the situation of internally displaced persons.

It is always a great pleasure to present you with the new volume of the Yearbook. We encourage you to contact us if you wish to submit a paper for a future volume, or just to express your opinion regarding the usefulness or content of PYIL ([pyil@inp.pan.pl](mailto:pyil@inp.pan.pl)).

*Karolina Wierczyńska & Łukasz Gruszczyński*