

The Role of Learned Societies in the Development of International and European Law in Switzerland

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The understanding of international law is, to a large extent, depending on its dissemination through experts. It is traditionally done in law schools and courses in international relations and diplomacy. Increasingly, domestic politics and law are impregnated by this subject. As a result, a large group of individuals can be interested in international law. The existence of learned societies plays traditionally an important role, although, in Switzerland, their role remains somewhat minor despite of the long tradition of the Swiss Society of International Law (SSDI, established in 1914) and the Swiss Branch of the International Law Association (ILA, established in 1929). While they should not have a monopoly for the promotion of the understanding of international law, new strategies to make them achieve their goals may be wanted. Besides publishing journals or yearbooks and the organization of events, communicating with larger groups of the population, through accessible means of communication (like social media), seems necessary. These problems are not new as this short history of the institutional developments in Switzerland – but most likely applicable to other regions – demonstrates.

Keywords: Learned societies – History – Swiss Society of International Law (SSDI) – International Law Association (ILA)

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I. International Law in Switzerland Before the 20th Century

A. Diplomats and Isolated Scholars Active in Switzerland

Although many believe that Switzerland has a century-long history of diplomatic relations with its neighbors, along with the use of international law and legal doctrine to defend its independence, is not entirely accurate and has certainly not led to a long tradition of scientific or academic work on public international law.¹ The prominence regarding the offering of its good offices and the promoting of international humanitarian law are relatively recent developments.

The dependence on its powerful neighbors (France in particular) and the absence of important princely courts has led to certain early Swiss contributions to international law without, however, reaching the same tradition as those of the major powers or traditional academic centers of the time. With its diplomatic relations, Switzerland was usually constrained to adopt pragmatic solutions and needed the help of major powers to defend its interests. This simply often meant to accept the conditions imposed by the other party, such as e.g. the resolution of the so-called Salmon War between France and the Canton of Basel (the conflict was about fishing rights and the location of their state border in the Rhine River, facilitated by Lukas Schaub – 1690–1758 – who was a career diplomat born in Switzerland but active for various European powers.²) Examples of multilateral undertakings are: the negotiators representing (some of) the Swiss Cantons at the peace conferences ending the ‘Thirty Years’ War in 1648³, and the Napoleonic Wars in 1815.⁴

1 See ANDREAS R. ZIEGLER, «Die Entwicklung der Völkerrechtslehre und -wissenschaft in der Schweiz – eine Übersicht», 26 *Swiss Rev. of Int'l. & Eur. Law* (2016), 21–53.

2 See CARL WIELAND, «Der Kleinhüninger Lachsfangstreit 1736», in: *Basler Jahrbuch*, 1889, 37–85 and STEFAN HESS: «Schaub, Lukas», in: *Historisches Lexikon der Schweiz* (HLS), Version vom 01.12.2010, online: <<https://hls-dhs-dss.ch/de/articles/019277/2010-12-01/>>, konsultiert am 30.08.2021.

3 See regarding the diplomatic activities of Johann Rudolf Wettstein: ZIEGLER, *supra* n. 1, at 21 et seqq., and JULIA GAUSS & ALFRED STOECKLIN, *Bürgermeister Wettstein, Der Mann, das Werk, die Zeit*, 1953, and *Historisches Museum Basel* (ed.), *Wettstein – Die Schweiz und Europa 1648* (Begleitpublikation zur gleichnamigen Ausstellung), 1998, and EDUARD HIS, «Anfänge und Entwicklung der Rechtswissenschaft in der Schweiz bis zum Ende des 18. Jahrhunderts», in: H. Schulthess (ed.), *Schweizer Juristen der letzten hundert Jahre*, Zürich 1945, 1–58, at 32–33.

4 See regarding the achievements of Charles Pictet de Rochemont: ANDREAS R. ZIEGLER, «Die Rolle des Völkerrechts in aussenpolitischen Krisen der Schweiz Schweiz – Wichtige völkerrechtlicher Streitfälle, Verträge und Urteile betreffend die internationalen Beziehungen der Schweizerischen Eidgenossenschaft», 138 *Zeitschrift für Schweizerisches Recht* (2019), 429–456, and *Traité entre la France et les Puissances Alliées, conclu à Paris, le 20 Novembre 1815*, Art. 3: The neutrality of Switzerland will be extended to the territory which is north of a line to be drawn from Ugine, including this city, to the south of the lake of Annecy, by Faverge, up to Lecheraine, and from there to the lake of Bourget up to the Rhone, in the same way as it was extended to the provinces of Chablais and Faucigny by article 92 of the final act of the congress of Vienna; abrufbar unter <www.europeana.eu/portal/en/record/9200365/BibliographicResour>

There certainly were important contributions by scholars and thinkers with a close relationship to what constitutes Switzerland today. In the absence of a unified State (basically until 1848) and the lack of employment opportunities for legal scholars, this did not lead to the establishment of a proper Swiss school or tradition in this field and even less to the creation of respective structures. Thinkers and diplomats like Jean Barbeyrac (1674–1744), Jean-Jacques Burlamaqui (1694–1748), Jean-Jacques Rousseau (1712–1778), or Emer(ich) de Vattel (1714–1767) had all close connections to the country but were usually obliged to find employment and recognition at foreign courts and universities and are thus often associated with them.⁵

B. European Developments and Swiss Representatives at the End of the 19th Century

At the time of the establishment of the *Institut de droit international* (IDI) and the International Law Association (ILA) in 1873,⁶ the recognition of international law as an important area of study and practice was just evolving in Switzerland (as in other regions). The Swiss Government started to perceive international law and its promotion as a tool for the defense of the independence of the small, young, landlocked State in the center of Europe. The Swiss Government also saw an opportunity for the State to be a host and organizer of international conferences and meetings as a way to improve its standing among its big powerful neighbors and, furthermore, globally.⁷ The so-called «Alabama Arbitration» (between the United Kingdom and the United States of America) had just taken place in Geneva (in 1872, at the invitation of the Swiss Government) and one of the arbitrators had been the Swiss Jakob Stämpfli (1820–1879), who was a former member of the Swiss Government and a lawyer by training.⁸

Building upon this positive experience, in the late 19th century, the Swiss Government would increasingly host important conferences to the Swiss capital, in Bern, which later also led to the establishment of several and permanent international bodies there. Most of these institutions would later move to Geneva, which, already in the late 19th century, was becoming a major center for international law. This devel-

ce_1000055519532.html>. Also, Declaration of the Powers that recognize and guarantee the perpetual neutrality of Switzerland and the inviolability of its territory of November 20, 1815.

5 See ZIEGLER, supra n. 1, at 22 ff.

6 See below.

7 See ZIEGLER, supra n. 1, and ZIEGLER, supra n. 4, 429 et seqq.

8 See LADISLAS MYSYROWICZ, «Alabama-Schiedsgericht», in: Historisches Lexikon der Schweiz (HLS), Version vom 11.04.2001, übersetzt aus dem Französischen, online: <<https://hls-dhs-dss.ch/de/articles/030176/2001-04-11/>>, konsultiert am 30.08.2021, and STEPHANIE SUMMERMATTER, «Stämpfli, Jakob», in: Historisches Lexikon der Schweiz (HLS), Version vom 15.04.2020, online: <<https://hls-dhs-dss.ch/de/articles/004635/2020-04-15/>>, konsultiert am 30.08.2021.

opment was helped by the presence of an important number of wealthy citizens who were interested to promote international law along with the establishment of specialized bodies in the city that had been an independent Republic for many centuries.

While Henri Dunant is one of the wealthy businessmen from Geneva, he is most often remembered, in popular culture, as a founder in 1863 of what was later to be called the International Committee of the Red Cross (ICRC) – and some even consider him a spiritual father of the ILA⁹ – it is his co-founder of the ICRC Gustave Moynier (1826/1910) who acted as the ICRC's President from 1864–1910 and attended the meeting leading to the foundation of the *Institut de droit international* on 8 September 1873 in Ghent (Belgium).¹⁰

There was also another Swiss participant at this meeting. It was Johann Caspar Bluntschli (1808–1881), although he was generally considered German (or more precisely a representative of the Grand Duchy of Baden before the unification of Germany in 1871). Just like other academics, he had left Switzerland (where university education in law – and in particular international law – was just about to develop) and was a professor at the University of Heidelberg from 1861 until his death.

Bluntschli also attended the meeting in Brussels (Belgium) from October 10 to October 13, 1873 that led to the establishment of the Association for the Reform and Codification of the Law of Nations (as the International Law Association was called until 1895). He is considered one of the co-founders of this organization (referred to in the foundation documents as the only German participant, though he was born in Zurich and is therefore a citizen of that Canton).¹¹ He had also taught in the city in his early career).

This meeting in Belgium was very much influenced by the Alabama Arbitration and Bluntschli had written an important legal opinion that had been instrumental to it.¹² He was elected as one of the vice-presidents of the association established in Brussels. This new association was seen as complementary to the *Institut de droit international* (IDI), created a few weeks earlier in Ghent, which is also in Belgium. The latter was going to be limited to scholars, while the association should also be open to

9 See RUTH FRENDO (Archivist and Records Manager at the Institute of Advanced Legal Studies), Archives of the International Law Association, (undated, available on: <www.ila-hq.org/index.php/about-us/ila-archive-material>).

10 See for example, FRITZ MÜNCH, «Institut de Droit International», 28 *Archiv des Völkerrechts* (1990), 76–105. It is interesting to note that in the Institute has established after WW II (1947) a «Fondation Auxiliaire de l'Institut de Droit International» governed by Swiss law with its original seat in Lausanne (now in Geneva). It should be mentioned that he also participated in 1877 in the Congo Conference held in Brussels upon invitation of King Leopold II which led to a much more controversial role as a defender of the king's policy in the Congo, see SIMONE PETITE, «Gustave Moynier, au service du CICR et ... du Congo léopoldien», in: *Le Temps* of 6 February 2021, online at: <www.letemps.ch/suisse/gustave-moynier-service-cicr-congo-leopoldien>.

11 See supra n. 8.

12 See FELIX LEHNER, J.C. Bluntschlis Beitrag zur Lösung der Alabamafrage, Zurich 1957.

a broad range of practitioners (politicians, publicists, economists etc.). During that meeting, it was decided that the next gathering should take place in Geneva, in August 1874. At this second conference, the presence of Swiss members was obviously more important.¹³ Among them were several local dignitaries and Gustave Moynier, as well as three academics: Charles Brocher¹⁴, a judge and professor of international private law at the University of Geneva, Joseph-Marc Hornung¹⁵, professor of public and international law at the University of Geneva as well as Karl Gustav König¹⁶, professor of civil law at the University of Bern. The meeting was opened with a speech by Antoine Carteret¹⁷, the President of the local Government of Geneva (*Conseil d'État du Canton de Genève*), who used this occasion to stress the role Geneva had played in the recent past as a mediator. One of the items discussed at this meeting was the border dispute between Switzerland and Italy that had been referred to arbitration.¹⁸ Karl Gustav König and Charles Brocher were elected as vice-presidents for Switzerland and Bluntschli as vice-president for Germany. On the last day, the organizers also thanked the newspaper Swiss Times¹⁹ for the abundant reporting on the conference.

Again in 1880 (August 24 to August 27), a meeting of the association was held in Switzerland, this time taking place in its capital²⁰, Bern, which at this time was still heavily promoted by the Swiss Government for international meetings (e.g., leading to the Bern Convention for the Protection of Literary and Artistic Works or the Convention on the International Traffic of Goods by Rail both in 1886). The opening speech at this meeting was given by a member of the Swiss Government, Federal Councilor Emil Welti (1825–1899). In the meantime, Alphonse Rivier (1835–1898) had become an officer of the association, although he figured, in the Proceedings, as a Professor at the University of Brussels. He was born as a Swiss citizen in Lausanne

13 See International Law Association, Reports of the First Conference Held at Brussels in 1873, 1895, 53.

14 See JEAN DE SENARCLENS, «Charles Brocher», in: Dictionnaire historique de la Suisse (on-line). He was also a member of the IDI.

15 Though erroneously reported as «T. Hornung» in the proceedings. See DANIEL MAGGETTI, «Joseph-Marc Hornung», in: Dictionnaire historique de la Suisse (on-line).

16 Referred to as Ch. Gustave in the proceedings; see CHRISTOPH ZÜRCHER, «Karl Gustav König», in: Dictionnaire historique de la Suisse (on-line).

17 See MARC VUILLEUMIER, «Antoine Carteret», in: Dictionnaire historique de la Suisse (on-line).

18 See International Law Association, Reports of the First Conference Held at Brussels in 1873, 1895 58. On the Valle Cravariola Arbitration (1874) see ANDREAS R. ZIEGLER, «Der völkerrechtliche Status der Schweiz», 29 Swiss Rev. of Int'l. & Eur. Law (2019), 549–580.

19 The official name of the newspaper was «The Continental Herald and Swiss Times» was later renamed «Geneva Times», and in 1879 «Tribune de Genève», one of the most famous newspapers of the French speaking part of Switzerland. It was owned by the US-American James Bates whose wife was from Geneva. See JEAN DE SENARCLENS, «James Bates», in: Dictionnaire historique de la Suisse (on-line).

20 See Association for the Reform and Codification of the Law of Nations [International Law Association], Report of the Eighth Annual Conference Held at Berne, August 24th–27th, 1880.

(Switzerland) and had taught at the University of Bern until 1867 and left the country in order to get more sophisticated academic opportunities abroad.²¹

II. The Swiss Society of International Law (SSDI) since 1914

A. Origins

The Swiss Society of International Law was only established in 1914. Approximately forty men (no women)²² met on January 25, 1914, at the prestigious Hotel Bristol in Bern. Max Huber, who had been one of the seven men²³ taking the initiative to establish the association, was elected as President for this meeting and became the first president of the Association. Together with eight other men he sat on the board of the society.²⁴

As the objective of the association, the rather short statute mentioned «the promotion of the participation of Switzerland in the shaping of international law» (Article 1). Probably nobody thought that the beginning of World War II was imminent when the date for the inaugural meeting was set. In fact, the first annual meeting to which all the members were invited could not take place before November 12, 1916, due to the war. During the rest of the war, no other general assemblies were possible and only after the end of the war, in 1919, two general assemblies were organized to use the momentum to reinvigorate the appetite for international cooperation and the rule of Law.²⁵

B. Leadership

The number of members remained rather limited, at least in the early years after its foundation. They were usually professors teaching at the few law schools in the country and some active attorneys, but also high-ranking civil servants (of the Federal administration including the National Bank²⁶ and international bodies having their

21 On Rivier's role see ZIEGLER, *supra* n. 1.

22 Membership to women was open from the beginning but it was only in 1984 that a woman was elected to become a member of the the Board (Verena Trutmann, Appellationsrichterin in Basel), see Protocol of the Board Meeting of 10 November 1984. See below.

23 Here again as at all the preparatory meetings of the future board of the society, no women were present.

24 See SVIR, *Protokolle der Mitgliederversammlung*, in the association's file, Meeting of January 25, 1914. See also HANS FRITZSCHE, «Die Schweizerische Vereinigung für internationales Recht (1914–1944)», in: *Vom Krieg und vom Frieden*, *Festschrift der Universität Zürich zum siebzigsten Geburtstag von Max Huber*, Zürich 1944, 77–98, 78.

25 See also FRITZSCHE, *supra* n. 24, 82.

26 A Director at the time of the Swiss National Bank, Kundert participated in the inaugural meeting of the SSDI, see FRITZSCHE, *supra* n. 24, 77. Another member of the Directorate active in the SSDI was G. Bachmann.

seat in Switzerland), high-ranking judges (especially of the Federal Supreme Court²⁷). There were even Federal Councillors sometimes, i.e., members of the Government, who were members of the association and who participated actively in the meetings.²⁸ Members of Cantonal governments²⁹ and courts³⁰ used to be active in the early days of the association.

The list of Presidents of the SSDI is as follows:

- Max Huber (1914–1919), Professor at the University of Zurich (1922–32 Judge at the Permanent Court of International Justice, President from 1925–27)
- Eugène Borel (1919–1921), Professor at the University of Geneva
- James Vallotton (1921–1926), Attorney-at-law in Lausanne
- Hans Fritzsche (1926–1938), Professor at the University of Zurich
- Werner von Steiger (1938–1950), Professor at the University of Berne
- Georges Sauser-Hall (1950–1956), Professor at the University of Geneva (1915–1924 Legal Counsel of the Swiss Ministry of Foreign Affairs)
- Eduard Otto von Waldkirch (1956–1960), Professor at the University of Fribourg
- Max Gutzwiller (1961–1963), Professor at the University of Fribourg
- Paul Guggenheim (1964–1969), Professor at the University of Geneva
- Frank Vischer (1970–1979), Professor at the University of Basel
- Luzius Wildhaber (1980–1990), Professor at the University of Basel
- François Knoepfler (1991–1996), Professor at the University of Neuchâtel
- Walter Kälin (1997–2002), Professor at the University of Berne
- Ivo Schwander (2003–2008), Professor at the University of St. Gallen
- Christine Kaddous (2009–2020), Professor at the University of Geneva
- Andreas R. Ziegler (2021–), Professor at the University of Lausanne

Usually, the presidency changed between a representative of private international law and public international law. Only more recently, this tradition was given up also in order to appoint the first female president in 2008 and to overlaps with European Union law. It became more and more evident how difficult it was to motivate eligible members to spend the time required to administer and bring forwards the association (especially when they are active practitioners, i.e. attorney, counsels, arbitrators, besides their teaching duties at universities).

27 An example was the participation of Federal Judge Merz in the inaugural board of the Association but also the activities of R. Guex. See FRITZSCHE, *supra* n. 24, 95.

28 E.g., Eduars Müller in the inaugural meeting of the SSDI and the Head of the Justice Department, Bundesrat Häberlin, on 9 December 1928. This is worth mentioning in view of the current state of affairs.

29 Such as Carl Christian Burchkhardt-Schatzmann, a member of the Government of the Canton of Basel-Stadt, who was a member of the inaugural board of the association in 1914.

30 See FRITZSCHE, *supra* n. 24, 93 referring to E. Vuilleumier and Jacques Le Fort.

While all board and general assembly meetings were initially held in Bern, the first time a general assembly, which was held as a trial, took place in Neuchâtel in 1929. Another attempt to increase participation was made in 1934, when the general assembly meeting was held for the first time in Zurich. In the beginning, the general assembly meeting was held on a Sunday so that professional obligations should not hinder members to participate. In 1931, the meeting was held for the first time on a Saturday in order to increase the participation – without any major positive influence on it. Originally, the SSDI organized two annual meetings for the members – first on Sundays, later Saturday morning (despite the initial disappointment about the small effect on participation).³¹ Finally, only one annual meeting for a larger audience was organized at a Law Faculty in the various regions on a weekday.

Although the membership was explicitly open to women (as had been discussed at the founding meeting of the General assembly in 1914 and recorded in the respective Protocol), their role was minimal (if not totally inexistent) in the early years of the association. Only men were present during these early years. Only in February 1933, it is mentioned explicitly in the Protocol of the General Assembly that Miss («Fräulein») Antoinette Quinche, attorney-at-law in Lausanne as representative of feminist associations («feministischer Vereinigungen») participated actively in the debates.³² This was mostly due to the sparse presence of women in academia and leading positions in the civil service and tribunals at this time. The Yearbook was published by the Association after 1944 although women started to publish only from the 1980s.³³ It was in 1984 when the SSDI needed a new treasurer, and the first woman was appointed to the Board.³⁴ Dr Verena Truttmann³⁵ who had been active in the association before as a accounts' revisor of the association and remained the only woman member of the association's board until 1991, when Monique Jametti-Greiner³⁶ was appointed.³⁷ The first (and so far, only) woman to become President of

31 See FRITZSCHE, *supra* n. 24, 90.

32 See FRITZSCHE, *supra* n. 24, 90.

33 Only in the early 1980s Krystyna Marek (who had been teaching international law at the Graduate Institute of International Studies in Geneva from 1958 in various functions) published an article. On the Anniversary Edition of 1988, Gabrielle Kaufmann-Kohler published an article in the Yearbook and in the same year, Denise Bindschedler (extraordinary professor at the Graduate Institute in Geneva, published a piece on the European Court of Human Rights where she sat as a judge, see HANS A. FREI, «Bindschedler-Robert, Denise», in: *Historisches Lexikon der Schweiz (HLS)*, Version vom 16.07.2009, online: <<https://hls-dhs-dss.ch/de/articles/028759/2009-07-16/>>, konsultiert am 12.08.2021). Both Krystyna Marek and Denise Bendschedler-Robert were among the first women to be admitted to the Institut de droit international (IDI). See MÜNCH, *supra* n. 10.

34 Protokoll der Vorstandssitzung vom 10. November 1984.

35 A legal consultant with Sandoz and later a member of the Appeals Court in Basel City. She had published a doctoral thesis in the area of international private law.

36 At the time high-ranking civil servant in the Ministry of Justice and adjunct professor at the University of Bern, later a member of the Swiss Federal Supreme Court.

37 Protokoll der Vorstandssitzung vom 4. Mai 1991.

the Association was Christine Kaddous in 2008. She was also the first President specialising in European Union law.

C. Publications

Just like many learned societies, the SSDI was conceived, from the beginning, as a platform to hold meetings and organize speeches by members and guest specialists. Originally, the SSDI published certain of these speeches and presentations in a series published by the traditional publishing house Orell Fuessli in Zurich. Between 1914 and 1943, a total of 38 numbered prints (Durckschriften/Publications) were published.³⁸ Among these prints figured also the inaugural speech held by Max Huber, at the first General Assembly in 1916 (no. 6). The first publications of this series entirely come from the meeting of 1916, which was dedicated to the perceived threat of an increased presence of foreigners in the small country – a fear that will haunt large parts of the society for the years to come. At the same time, the following meeting on February 14, 1919, was dedicated to the nationality of companies, probably as a reaction to the difficult status of officially neutral country's companies engaging in trade with parties at war. The second meeting (November 2, 1919) on that same year was again used to discuss the question of neutrality. Not all presentations and speeches at the General Assemblies were published, and one observer already noticed at the time that this was obviously regrettable, especially as most members of the association, even then in the early days, did not attend the (ordinarily annual) general assembly meetings.

In February 1943, Professor Sauser-Hall recommended to the SSDI to establish a Yearbook of International Law.³⁹ Similar publications had been launched in neighbouring states⁴⁰ and it seemed to be an interesting way to raise attention for the work of the SSDI and its publications. As a result, from 1944 and onwards, the Association published the Swiss Yearbook of International Law (*Schweizerisches Jahrbuch für internationales Recht/Annuaire Suisse de droit international*), following the tradition of other national societies. In 1991, the Swiss Review of International and European Law replaced the yearbook. The idea of a proper international law review for the country had first been discussed by the SSDI Board in 1915, when a financial offer

38 See Druckschriften der Schweizerischen Vereinigung für Internationales Recht – Orell Fuessli.

39 Protokoll der Vorstandssitzung vom 7. Februar 1943.

40 In Germany, a Yearbook had been published (*Jahrbuch des Völkerrechts*) since 1913 (until 1926) by the Kiel Institute of International Law under the leadership of Theodor Niemeyer and Karl Strupp; in France the *Annuaire français de droit international* was launched in 1955 (while the *Revue Générale de Droit International Public* existed since 1894); in Italy, the Italian Yearbook was only launched in 1975 but the *Rivista di Diritto Internazionale* had existed since 1906 (see RICARDO PAVONI, «Italian Yearbook of International Law: Genesis, Development and Prospects», in: *Netherlands Yearbook of International Law* 2019).

had been received in this respect from the Carnegie Foundation, in order to establish a scientific publication in a neutral country, while the leading European nations were waging war. The offer was not taken up, as the financial solution and the employment of qualified staff seemed questionable at the time.⁴¹

Since 1975, the SSDI/SVIR publishes also a series entitled «Schweizer Studien zum internationalen Recht/Études suisses de droit international» with the academic publisher Schulthess, in Zurich. They were conceived as a continuation of the series that had been founded at the University of Zurich in 1940 (Zürcher Studien zum Internationalen Recht).⁴² The management of this new series was delegated to a committee designated by the Board of the SSDI, originally Prof. Christian Dominicé, Prof. Dietrich Schindler and Prof. Alfred E. von Overbeck. Usually, only very good doctoral dissertations were accepted for publication in order to maintain the high reputation of the series.⁴³

D. Sponsorship

Apart from facilitating the publication of specific topics of interest in Switzerland by senior experts and, later, by young doctoral candidates, the association increased overtime its role in motivating young students to be more actively studying international law and taking part in international initiatives. During the 1990s, the SSI supported also the Concours Charles Rousseaux. In 2017, the SSDI also decided to establish a Prize for the best research thesis (habilitation or doctorate) that is awarded annually ever since. In addition, since 2018, a scholarship is awarded to young researchers (in particular PhD students) who wish to undertake a traineeship with the Hague Conference of Private International Law or any other international institution, including the various institutions of the European Union.

E. Public Statements

When it comes to direct influence on the political process in Switzerland, and the Swiss practice regarding the international law, the record of the SSDI is more ambiv-

41 See Protokoll der Vorstandssitzung vom 26. Juni 1915. Interestingly, in 1997, a similar offer by the American Society of International Law to co-host a regular meeting in Geneva did also not lead to any sustainable results due to the financial burden involved. See Protokoll der Vorstandssitzung vom 14. November 1997. A single meeting was co-organized in 1998 in Geneva (ASIL Forum Geneva). See Minutes of the General Assembly of 14 November 1997.

42 54 volumes from 1940–1974. Later, certain universities in Switzerland launched their own series, sometimes even specialized in international law, like the Sankt Galler Studien zum internationalen Recht (Dike Verlag, since 1989) or with a sub-collection on international law as in the case of the Universities of Geneva (Collection Genevoise – Droit international, Schulthess) or Lausanne (Collection Lausannoise – Droit compare. Européen et international, Stämpfli).

43 See Minutes of the Board Meeting of 22 January 1999.

alent. Already in 1944, a former President of the SSDI, Hans Fritzsche wrote that looking back at the first thirty years of the association, he could only report described silent and continuous work in a small group, rather than big achievements.⁴⁴

In 1919, following the discussion of Swiss neutrality in relation to the proposed accession of Switzerland to the League of Nations, the SSDI adopted a resolution with 23 against 3 votes in supporting of the accession.⁴⁵

Initially, the Board would also make recommendations of appointments to international courts and tribunals, in particular the Permanent Court of International Justice.⁴⁶ In addition, the board would occasionally appoint special *ad hoc* committees or experts to prepare reports on current treaty negotiations or reforms and endorse the final recommendations that were to be sent to the national or international bodies in charge. An early example was the appointment of Federal Judge Merz, a Member of the Board head, an *ad hoc* committee, that would prepare a report on the results of the 1925 Hague Conference.⁴⁷ On the national level, the association was much more responsive to current debates in Parliament and maintained a direct contact with the federal administration that lacked the specialised experts in this field or simply did not want to take advantage of knowledge among the members of the specialised association.⁴⁸

Afterwards, this involvement in the policymaking decreased. It was also due to the diminishing participation of civil servants, attorneys, company representatives and judges in the association over time. The association became more and more a purely academic association with mostly law professors on its board who preferred their academic independence and found it difficult to develop common positions. In 2017, the SSDI exceptionally published a brochure regarding the relevance of international law in daily life, which was widely distributed among students and interested persons of the general public.⁴⁹ It is still available online. Certainly, the interest in such a more widely available source of information, that should increase the interest of a wider and younger audience, was also triggered by the ongoing debates on the role of international law at the time in Switzerland. The nature of the publication was rather ed-

44 See FRITZSCHE, *supra* n. 24, 78.

45 Minutes of the Assembly Meeting of 2 November 1919 as reported also by above n. 24, at 83.

46 See Minutes of the Board Meetings of 10 July 1921 and 1 July 1923.

47 See FRITZSCHE, *supra* n. 24, 87.

48 An example of 1930 is the examination by the association to the parliamentary motion on the responsibility for damages endured by neutrals during war, see FRITZSCHE, *supra* n. 24, 89.

49 SVIR, *Die Schweiz und das Völkerrecht*, 2017, online.

ucative and non-partisan in this respect.⁵⁰ No reference to the upcoming popular vote on the respective rules in the Constitution in 2018 was included.⁵¹

III. Other Associations

A. In General

Occasionally, the SSDI also cooperated with other bodies, e.g., as early as 1927 when a joint meeting was held with the Swiss Branch of the «Internationale Vereinigung für gewerblichen Rechtsschutz» dedicated to a presentation of the Hague Conference preparatory work for a revision of the Paris Convention, for the Protection of Industrial Property.⁵²

The cooperation with the Swiss Association for Comparative Law was often discussed and led ultimately to the dissolution of this association and the transfer to the SSDI of its role at national level as member of the International Association of Legal Science (IALS) by the SSDI in 1994.⁵³

There is, up to this day, a Swiss Section of the Association Henri Capitant, which is an association particularly active in French speaking countries in comparative (private) law.⁵⁴

Overall, the cooperation with the other Swiss association active in the same area was never easy. The SSDI tried to offer its good services to circulate information and coordinate the work, but the success remained very limited.⁵⁵ The creation of specialized organisations for specific areas of international law (like international economic law or the law of armed conflicts⁵⁶), especially at the global level and the emergence of a proper field of European law⁵⁷ along with the higher appeal of professional organ-

50 As model served a brochure of the American Society of International Law (ASIL): «Int'l Law: 100 Ways it Shapes Our Lives». It was conceived from the proposition that international law not only exists but also penetrates more deeply and broadly into every day's life more than it is generally recognized. One-hundred examples of this fact were identified by ASIL members, vetted by a small group of experts, and organized into seven chapters: daily life, leisure, travel, commerce, health and the environment, personal liberty, and public safety and security. This list has proved a useful education tool for non-expert audiences, from students and the public to judges and policymakers. It is equally freely available for download online. See: <www.asil.org/resources/100Ways>.

51 On November 25, 2018, the Swiss rejected the popular initiative «Swiss law, not foreign judges» (Self-determination Initiative) with 66% of the votes and no canton in favour.

52 See FRITZSCHE, *supra* n. 24, 87.

53 See Protokoll der Vorstandssitzung vom 30. Oktober 1992, 3. März 1994 und 20 November 1994.

54 See Association Henri Capitant, Groupe Suisse at: <www.henricapitant.ch>.

55 See already Protocols of the Board Meetings of 7 November 1959 and 27 May 1961.

56 The International Society for Military Law and the Law of War was created in 1956 and has a Swiss group, traditionally headed by a member of the Armed Forces from which stem also many of their members.

57 Even after the creation of the Swiss Association for European Law (ASDE) on May 10, 1966, the SSDI covered also European topics, e.g., in 1990, see Protokoll der Vorstandssitzung vom 17. November 1990.

izations for attorneys⁵⁸ and judges⁵⁹, made the role of the SSDI remain somewhat reduced.

There are also binational organizations for lawyers.⁶⁰ Younger lawyers in Switzerland often prefer to be active in more political organizations, such as *Foraus*⁶¹ or *Unser Recht*.⁶² In addition, it has become easier to participate in major events, organized by large associations like the European Society of International Law (ESIL) or the American Society of International Law (ASIL). In addition, Swiss international lawyers have traditionally participated in the work of the German Society of International Law (DGIR)⁶³ and the French Society of International Law (SFDI). Consequently, the idea of organizing joint events in order to assure a better attendance was not really put into practice⁶⁴ though on rare occasions joint ventures were, in fact, possible.⁶⁵

Although the SSDI has come a long way over the years, this article would not be complete if it was to omit another learned society, as the SSDI is not the only well-known learned society in Switzerland; as a matter of fact, the International Law Association (ILA) and its Swiss branch is more than worth mentioning, considering the relationship the SSDI has with the branch.

B. The Swiss Branch of the International Law Association (ILA)

The International Law Association (ILA) is a non-profit organization founded in Brussels in 1873. It promotes the furtherance of international understanding and respect for international law along with its study and its development and clarification⁶⁶. Membership of ILA is spread with Branches across the world, including Swit-

In particular, for the Journal established in 1991 a specific mention of European law in the title was adopted. The idea to merge the ASDE and the SSDI was sometimes discussed but ultimately always rejected as this could have created problems regarding the acceptance of the new Swiss association by the FIDE (International Federation of European Law) established in 1961.

58 The Swiss Association of Jurists is Switzerland's largest and oldest association in this field (founded in 1961). The Swiss Bar Association is a more business-oriented association. There exist also many regional bar associations.

59 The Swiss Judges Association was founded in 1969 to participate in the «Union internationale des magistrats» (U.I.M.). See: <www.svr-asm.ch/de/geschichte.htm>.

60 Like the Deutsch-Schweizerische Juristenvereinigung eV. See <www.dsjv.de>.

61 *foraus* – Forum Aussenpolitik – Forum de politique étrangère, see: <www.foraus.ch>.

62 See: <<https://unser-recht.ch>>.

63 In 2013, the Biennial Meeting of the DGIR was held in conjunction with the SSDI in Lucerne, as the Professor Daniel Thürer happened to be President of the DGIR and Board Member of the SSDI at the same time.

64 See Protocol of the Board Meeting of November 4, 1966.

65 Such as a combined annual meeting of the SSDI and the ASDE in 2006 under the auspices of the Swiss Ministry of Foreign Affairs, and also in 2009 and 2010. See Protocol of the Board Meeting of November 18, 2005 and of May 27, 2009 and April 29, 2010. On October 2, 2017, a joint event with ASA (see supra n. 58) was organized. See Minutes of the Board Meeting on November 16, 2017.

66 International Law Association (2021), about us, London, <www.ila-hq.org/index.php/about-us>.

zerland. The relationship with the International Law Association (ILA) was of relevance for the SSDI since the early years after World War I.⁶⁷ As discussed above, the ILA was founded in 1873 in Brussels and several Swiss citizens or persons with a close link to Switzerland, were members in their persona capacity. As from 1923, discussions were held within both the Board of the SSDI and the General Assemblies of the SSDI, as to whether the SSDI should and could become a collective member of the ILA, for example by assuming parallelly the function as the Swiss Branch of the ILA. The SSDI had been approached from 1923 by other national branches of the ILA in view of establishing a Swiss branch. The proposal was discussed upon various occasions and finally, at the General assembly of June 16, 1929, it was decided that a separate branch should be established where many members of the SSDI would also be members of the new association and would ensure the coordination.⁶⁸ The main argument against such a procedure was the obligation to pay membership fees for each member to the ILA.⁶⁹ On November 1st, 1929, a group of interested private individuals founded a separate Swiss Branch of the ILA, with the hope that the interested individuals would guarantee a certain mutual information and coordination of activities. The annual meetings of the ILA-Swiss branch were originally organized the evening before the annual meeting of the SSDI in order to facilitate this coordination.⁷⁰

On the domestic level, the SVIR/SSDI which today has more than 300 members, usually takes the lead in the organization of events. In fact, the ILA-Swiss Branch manages the relationship with the ILA Headquarters and promotes ILA activities among its Swiss members. The first President of the ILA's Swiss Branch was Eugène Borel (1862–1955) who taught international law at the University of Geneva.⁷¹

Under the leadership of Max Gutzwiller (1889–1989)⁷², who succeeded to Borel (who remained an Honorary President of the Swiss Branch) when the ILA resumed meeting after WW II⁷³, the 45th meeting was held 1952 in Lucerne.⁷⁴ Later, the Swiss committee was considered too small to organize another biennial meeting.⁷⁵ In more

67 See also FRITZSCHE, *supra* n. 24, 88.

68 FRITZSCHE, *supra* n. 24, 88.

69 Protokoll der Mitgliederversammlung vom 16. Juni 1929.

70 Protokoll der Mitgliederversammlung vom 1. Dezember 1929.

71 See ZIEGLER, *supra* n. 1, 21

72 Professor for International Private Law at the University of Fribourg i.Ue. from 1921–1926 and 1937–1956. In between he had taught in Heidelberg. See FELIX WUBBE, «Max Gutzwiller», in: *Dictionnaire historique de la Suisse* (on-line).

73 From 1939 to 1945 no meetings of the Swiss Branch of the ILA were held, see FRITZSCHE, *supra* n. 24, 88. The SSDI did not meet between 18. June 1939 and 7 February 1943.

74 See International Law Association Conference. (1953). Report of the 45th conference of the International Law Association, 1952, Lucerne.

75 See ELISABETH KOPP, «Allocution», in: D. Dicke (ed.), *Foreign Debts in the Present and a New International Economic Order*, New York 1986.

recent years, the particularly high price level in Switzerland constituted another reason to be cautious regarding the organization of meetings in the country, though many voices were in favor of going back, particularly in Geneva.

Dr Albert Riedweg, an attorney in Lucerne, who had been an honorary treasurer of the ILA Swiss Branch before, represented the Swiss Branch as President at the international conferences from 1956 to 1966 but died soon after while still in office.⁷⁶ Frank Vischer (1923–2015; Professor of International private law at the University of Basel) acted as a President at the 1968 Conference. But already in 1968, he was succeeded by a student of Max Gutzwiller, Professor Alfred Eugène von Overbeck (1925–2016)⁷⁷, also active in the area of international private law (he represented the Swiss Branch for the last time at the biennial meeting in 1982 in Montreal). He was followed by Professor Paul Volken (President from 1984–2004) who was the third President in a row who was also a private international law specialist and held the respective Chair at the University of Fribourg.

In 2005, Andreas R. Ziegler, a professor of public international law at the University of Lausanne took over as President. He also presides the Swiss Society of International Law since 2021 which may allow for an even closer cooperation between the two associations. During this time, Werner Schmid-Lenz and Stefan Wehrenberg acted as Secretary-Generals. The ILA- Swiss Branch has an Executive Board which is currently composed of the President (Andreas R. Ziegler, Professor, Lausanne/Zurich), the Secretary General (Stefan Wehrenberg, Attorney, Zurich), Rabab Yasseen (Attorney, Mentha Avocats, Geneva) and Débora Ponce (Mission of Guatemala to the WTO, Geneva). The idea is to have a diverse composition of the board that represents the various linguistic regions of the country as well as practitioners and academics in public and private international law.

It is, of course, impossible to give a full account of the participation of the Members of the Swiss Branch in the participation of the ILA. Nevertheless, it is interesting to see that the involvement in economic and commercial questions has been particularly important. This is probably no coincidence that for many years (and still today), foreign economic relations were and are of primary importance for the Swiss society along with its well-being. Without forgetting the breadth of the Swiss participation in other committees and study groups (such as IHL or neutrality)⁷⁸ one can certainly mention the role of Swiss members in the Committee on International Monetary Law of the International Law Association (MOCOMILA, established in 1951) which was headed by at least three Presidents over time: Max Gutzwiller – the first

76 The ILA Executive Council paid him tribute on November 9, 1968, during the 53 Conference in Buenos Aires.

77 He had been the Secretary of the Hague Conference for International Private Law from 1956 and in 1968 the successor of Max Gutzwiller at the University of Fribourg i.Ue.

78 See e.g., EUGÈNE BOREL, «Mémoire du groupe Suisse de l'International Law Association», sur la neutralité helvétique», *Schweizerisches Jahrbuch für internationales Recht*, Vol. 2, Zürich 1946, 103–109.

President at the establishment of the Committee, Henri Guisan and Mario Giovanoli (1995–2004). The latter two were both General Counsel/Legal Adviser to the Bank of International Settlement (BIS), based in Basel which certainly explains this choice partly.⁷⁹ Also, in the area of general international economic law, and trade in particular, Swiss members were particularly active. In the 1980s, Professor Detlef-Christian Dicke (1942–1992) of the University of Fribourg was one of the Rapporteurs of the Committee on Legal Aspects of the New International Economic Order (NIEO). He organized a special meeting of this committee in Fribourg on February 10, 1986, where a member of the Federal Government (Elisabeth Kopp) addressed the audience.⁸⁰ The other Rapporteur of this Committee was Ernst-Ulrich Petersmann⁸¹, a German national who has been a member of the Swiss Branch for a very long time. Moreover, after a long stance as Legal Counsel at the GATT Secretariat, he held professorships at the universities of St. Gallen and Geneva, before accepting an appointment at the European University Institute in Florence.⁸² He became for many years the Chair of the very popular International Trade Law Committee (1992–2014).

Also, Professor Thomas Cottier of the University of Bern acted as one of the Rapporteurs of this committee. He presided later himself the Committee on International Law on Biotechnology (2003–2010) which looked, among other things, at the role of the World Trade Organization in this field. This tradition was followed by the author of this contribution as Chairperson of a Study Group on Preferential Trade Agreements (2013–2016) and as Rapporteur of the Committee on Rule of Law and International Investment Law (since 2015).

The exact relationship between the Swiss Branch of the ILA and the SSDI continued to be discussed by the Boards of these institution. In the early 1970 and 1980s, Professor Van Overbeck had made proposals to merge the two – but this never happened.⁸³ In 1988, a special document on the cooperation between the SSDI and the ILA was adopted.⁸⁴

79 See on their appointments at the BIS: <www.bis.org/about/formerofficials.htm>.

80 See ELISABETH KOPP, «Allocation», in: D. Dicke (ed.), *Foreign Debts in the Present and a New International Economic Order*, London 1986.

81 See ERNST-ULRICH PETERSMANN, «Trade Restriction for Balance-of-Payments Purposes, and the Gatt Strengthening the Soft International Law of Balance-of-Payments Adjustment Measures», in: D. Dicke (ed.), *Foreign Debts in the Present and a New International Economic Order*, London 1986.

82 My first contact with the ILA was during a meeting held by the President of this Committee in Geneva when as a research assistant of my doctoral supervisor I had the pleasure to serve drinks in the garden of his house on the shore of Lake Geneva. My first ILA Biennial Conference was in London, in 2000, where I was allowed to carry the shopping bags of a senior French Professor of international renown while discovering Notting Hill.

83 See Protocols of the Board Meetings 2 June 1973 and of 20 November 1982.

84 See «Verhältnis von SVIR und ILA» (20 May 1988), online at: <<https://svir-ssdi.ch/de/svir/portrait/>>.

IV. Outlook

In recent years, the work of learned societies in international law can be described as very stable but at an admittedly modest level. The membership is rather declining lately. For the SSDI, the number of members went from 680 in 1990⁸⁵ to 463 in 2000 to 343 in 2008⁸⁶ and remains stable since then. This must be seen, however, in the context of a country with a growing population, and an even quicker growing number of academics, including law. Therefore, the importance of the association has certainly shrunk in recent years, and one must observe that despite a more important number of academics teaching international law at universities and undertaking research, more and more of them decide not to join the SSDI. A huge number of members are interested in international law and support the association without being actively involved in the making and public discussion of international law.⁸⁷ This can be seen as a welcome democratization of the interest in international law, but the fact that major players are not involved is certainly dangerous.

The organization has not been able to attract the increasing number of practitioners (attorneys, judges, civil servants) dealing with international legal transactions. Therefore, they won't be attracted to any learned societies as they often prefer to work in more business-oriented organizations like the International Bar Association (IBA) or specialized associations like the Association for International Arbitration (AIA), the International Fiscal Association (IFA) or the Association of International Tax Consultants (AITC).

A peculiar Swiss problem is the fact that civil servants dealing with international law in Switzerland are today rarely very active in the SSDI and seldom members of the Swiss Branch of the ILA. They were and are considered as very important in the work of these associations and in many countries. In fact, they use these associations to understand the view of other administrations and present their domestic governmental perspective. This was not always the case, former Heads of the Directorate of Public International Law – the unit in charge of international law in the Swiss Foreign Ministry and thus for the entire Swiss Administration – like Ambassador Emanuel Diez (1919–1990; he was even a member of the Committee) and Ambassador Charles-Matthias Krafft, were members of the ILA and were also on the board of the SSDI (Ambassadors Rudolf Bindschedler⁸⁸, Matthias Krafft, Nicolas Michel, Paul

85 See Minutes of the Board Meeting of 5 May 1990.

86 See Protocol of the Board Meeting of 27 May 2009.

87 Professor Daniel Thürer reported in 2015 that the SSDI had about 350 members at the time, while the German Equivalent had only 500 – in a country with at least 80 times more inhabitants. See Minutes of the Board Meeting of March 4, 2015.

88 He was from 1950 to 1961 Head of the Legal Service in what today is the Ministry of Foreign Affairs and afterwards Chief Legal Advisor until 1980. See: MARC PERRENOUD, «Bindschedler, Rudolf», in: His-

Seger, Valentin Zellweger; Roberto Balzaretto etc.).⁸⁹ This is also true for the persons in charge of International law at the Ministry of Justice (Philippe Boillat, Monique Jametti-Greiner etc.).⁹⁰ An important factor regarding their absence in the Swiss Branch of the ILA may be that (legal) academics are not particularly popular with politicians in Switzerland. As a result, civil servants are often discouraged (or simply afraid) to participate actively in legal debates and were even asked to withdraw at least from leading positions in learned societies. Instead of cooperating in scientific associations, the Directorate of Public International Law has been inviting all professors of international law for an annual round table discussion for some years now and also organizes its own «Day of Public International Law» once a year.

The most recent example is the withdrawal in 2019 of the directors responsible for public international law (Ambassador Corinne Ciceron Bühler) and European Law (Ambassador Roberto Balzaretto) in the Ministry of Foreign Affairs who normally were on the board of the Swiss Society of International Law (SSDI).⁹¹ The mentioned corporate governance considerations by the Ministry of Foreign Affairs headed by Federal Councilor Ignazio Cassis.⁹² This is obviously regrettable from the standpoint, not only for the association but also for the debate on international legal problems in Switzerland. It is also a missed opportunity to foster the understanding of Switzerland's positions worldwide.

Just like the SSDI, and as in other countries, the ILA – Swiss Branch is also facing problems in being attractive to young academics. The specialization (and associated fragmentation) of international law makes many of them prefer to be part of more specialized organizations like the Society of International Economic Law (SIEL founded in 2008), the International Society for Military Law and the Law of War (founded in 1956), or the International Federation for European Law (FIDE, 1961). Therefore, young academics seem to avoid, in a sense, learned societies in general.

torisches Lexikon der Schweiz (HLS), Version vom 31.10.2002, übersetzt aus dem Französischen, online: <<https://hls-dhs-dss.ch/de/articles/015765/2002-10-31/>>, konsultiert am 10.08.2021.

89 It seems that Professor Nicolas Michel only was a member of an ILA Committee while an academic at the University of Fribourg before he assumed in addition the role of Head of the Directorate for Public International Law between 1998 and 2003 under Federal Councillor Flavio Cotti. He sat, however, on the board of the SSDI.

90 These were normally the persons in charge of private international law (including arbitration) and the representation of Switzerland before the European Court of Human Rights.

91 This Unit also used to make a financial contribution to the SRIEL for the part dedicated to the Swiss practice in international law. See Protocol of the Meeting of the Board of 3 May 2007. From 2009 onwards the Ministry and the SSDI also organized joint lunch seminars in Bern. See Protocol of the Board Meetings of May 20 and November 14, 2008. Originally several per year were financed while in 2014, it was announced that only one could be financed per year. Minutes of the Board Meeting of May 26, 2014. For a long time, the Ministry of Foreign Affairs had also helped the review published by the SSDI by guaranteeing subscriptions by many Embassies. This was cut in 1998 to save costs. See Minutes of the Board of November 13, 1998.

92 See Minutes of the Board Meeting of 19 June 2020.

Another peculiar Swiss problem is the fact that many academics in the area of international law are foreigners and prefer to remain associated only with their home branches to stay in contact with their colleagues instead of adhering to the Swiss Branch. This is particularly true for the highly respected Graduate Institute of International and Development Studies in Geneva. The same is also true regarding the many international legal servants and foreign diplomats, particularly in Geneva. Traditionally, especially high-ranking experts based in Geneva (often with an Anglo-Saxon background) were also members of the ILA – Swiss Branch although this tradition is slowly fading away. As in other countries, only a minor part of the members of the Swiss Society of International Law (SSDI/SVIR) are members of the ILA – Swiss Branch.

While the SSDI/SVIR has approximately 350 members, the ILA – Swiss Branch has about 100. This may reflect very well the number of members who are interested in the activities of the ILA worldwide and who have the resources to participate in the biennial meetings often in far-away places. Maybe more affordable activities could help to involve more (younger) professionals and academics interested in international law.

The peculiar situation of Switzerland, being at the center of Europe and yet, not being part of the EU and its relations with it, along with its law, are often seen as a kind of international law, leading to an important overlap between the work of the associations active in the two fields. Other organizations focusing exclusively on European law seem to have even more problems to remain attractive and motivate their members to participate actively. In addition of the ASDE, this seems also to be the case of the Swiss Group of ECSA (European Community Studies Association), especially during times when the deepening of the relations between the EU and Switzerland is stagnant and/or controversial. To conclude, it seems that learned societies in Switzerland have some difficulty attracting new members. They remain with a fairly low membership rate, but one that remains stagnant over the years.