



**CICC questionnaire to candidates for a post of judge
of the International Criminal Court.**

*Please reply to some or all the following questions as comprehensively or
concisely as you wish*

Name: Hans-Peter Kaul
Nationality: German
Nominating State: Germany
List: B

While the first question is relevant to either list A or list B candidates, we know that some candidates have competence that would qualify for both lists, and we would want them to show their full experience in both criminal law and international law. Question 1a) has been specifically drafted with list A candidates in mind. Likewise, question 1b) has been drafted for list B candidates. However, candidates with competence in both criminal and international law should feel free to answer any question in 1a) or 1b) to give the reader a more complete view of their background and experience.

1 a) For candidates on list A:

- **How would you describe your competence in criminal law and procedure?**
- **How would you describe your experience as judge, prosecutor, counsel or in other similar capacity, in criminal proceedings?**

1 b) For candidates on list B:

- **How would you describe your competence in relevant areas of international law, such as humanitarian law and the law of human rights?**
- **How would you describe your experience in a professional legal capacity that is of relevance to the judicial work of the Court?**

My origins as a practising international lawyer go back to the 1970s. As a young post-graduate, I took up the post of assistant to Prof. Dr. Hermann Mosler, then Director of the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (who later became the first German judge at the ICJ). In that capacity, and before joining the German diplomatic service in 1975, I attended the summer course of the Academy of International Law in The Hague in 1974. My close association with the Max Planck Institute has continued throughout my professional career.

With regard to the required qualification of established competence in relevant areas of international law such as humanitarian law and the law of human rights I should like to mention that I have extensive practical experience in these fields in particular through my legal work as Head of the Public International Law Division in the German Foreign Office from 1996 to 2002. The Head of this Division is on a day-to-day basis responsible for all questions of public international law which are of relevance to the Foreign Office and to the German government as a whole. This includes for example the following areas: questions of international humanitarian law relating to the Geneva Conventions and the two Additional Protocols; questions relating to the law of human rights including the International Covenants of 1966 on Civil and Political Rights and on Economic, Social and Cultural Rights and the European Convention on Human Rights of 1950. As Head of the Public International Law Division I was also responsible inter alia for the following cases before the International Court of Justice: La Grand Case (1999 - 2001); Legality of Use of Force Case (1999 - 2004); Certain Property of Liechtenstein Case (2001 -2005).

As the Public International Law Division is also responsible for the progressive development of international law and international courts I have been, since 1996, Head of the German ICC delegation and German Chief Negotiator for the Rome Statute, its secondary instruments and the establishment of the International Criminal Court. In June 2002 I was appointed German Commissioner for the ICC.

2. What are the qualifications required in your nominating State for appointment to the highest judicial offices? How do you meet these qualifications?

*Candidates for appointment to the highest judicial offices in Germany must have passed both the First and Second State Examination in Law. Candidates must be over 40 years old and must be eligible for election to the German Parliament.
I fully meet these requirements.*

3. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure used for your nomination.

The procedure used for the first election in 2003 was the one provided for the nomination of candidates for the International Court of Justice in the Statute of that Court (Article 36.4 (a) (ii) of the Rome Statute). On 29 October 2002 the German national group in the Permanent Court of Arbitration (Prof. Dr. Jost Delbrück, Prof. Dr. Knut Ipsen, Prof. Dr. Albrecht Randelzhofer, Prof. Dr. Walter Rudolf) informed the German government that the national group had, after careful consultation and deliberation, unanimously decided to nominate me as the German candidate. On 21 November 2002, the German government communicated this nomination to the UN Secretariat.

The same procedure was used for the nomination for my re-election. On 12 July 2005 the German national group in the Permanent Court of Arbitration (same composition as above) informed the German government that the national group had unanimously decided to nominate me again as the German candidate.

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4. Have you provided the statement required by article 36(4)(a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of States Parties? If not, why not?

Such a statement has been provided.

5. What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in this language? What is your knowledge and fluency in French, if it is not your native language? Do you have experience working in this language?

I am fluent in English, with extensive experience in an English-speaking environment, including drafting papers and conclusions in English.

Je parle également couramment le français. Je continue de travailler dans cette langue, par exemple dans ma qualité de Président de la Section préliminaire, qui est la seule section bilingue à la Cour. Ceci inclut la rédaction de textes ou de conclusions en français.

6. Do you have any specific legal expertise, including, but not limited to, violence against women or children?

Since 1996, I have been a member of the National Advisory Committee of the German Red Cross Society on international humanitarian law; I was chairman/organizer of the intersessional working meetings concerning the definition of war crimes held in Bonn in June and October 1997 ("Bonn Paper on War Crimes", UN Doc. A/AC 249/1997/WG.1/CRP.8 of 5 December 1997 as a basis for Art. 8 on war crimes in the Rome Statute); I was also a member of the German National Expert Commission on the "Völkerstrafgesetzbuch" ("Code of Crimes against International Law") which entered into force on 30 June 2002.

In the context of these activities, I have actively contributed to and promoted the incorporation of provisions of substantive criminal law in the Statute relating to violence against women or children and the corresponding sets of elements of crimes.

7. a) Please provide us with a list of your writings and opinions relevant to evaluating your experience.

7. b) Please provide us with an electronic copy of any writing or opinion describing your experience as outlined in questions 1a), 1b) and 5.

A list of selected publications on the International Criminal Court, international criminal law and public international law has been included in the curriculum vitae available on the ICC website (http://www.icc-cpi.int/library/asp/ICC-ASP_ej2_ger-cv.pdf).

For reasons of convenience, an updated list is reproduced as an annex to this questionnaire. It includes in particular my latest publication in the American Journal of International Law, "Developments at the International Criminal Court – Construction

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Site for More Justice: The International Criminal Court After Two Years” (Am. J. Int’l L., Vol. 99, No 2, April 2005).

8. a) For candidates not currently ICC judges:

Please explain your qualifications for this position. What aspects of your career, experience or expertise outside your professional competence do you consider especially relevant to the work of an ICC judge?

8. b) For candidates currently ICC judges:

How do you think your experience as an ICC judge would serve you for another mandate?

My experience as an ICC judge of the Pre-Trial Division, as its President and as a member of Pre-Trial Chamber III, has given me profound insights in the workings of the Court, both from an institutional and a procedural point of view. In addition, I currently assume, as the representative of the Pre-Trial Division, the interim chairmanship of the Advisory Committee on Legal Texts in accordance with Regulation 4 sub-regulation 1 (a) of the Regulations of the Court. The special insights and experiences gained during my first three-year term in The Hague will be invaluable in the conduct of the coming proceedings.

Since November 2003 I have also been the chairman of the Inter-Organ Committee on Permanent Premises for the International Criminal Court.

9. Why do you want to be a judge at the ICC?

My commitment to the ICC since 1996 is well-known. This sustained commitment was and continues to be based on my belief that the International Criminal Court can make a substantial contribution towards international justice by prosecuting and punishing perpetrators of the most serious crimes of concern to the international community as a whole.

10. What do you think will be the biggest challenges facing you as an ICC judge?

To help consolidate the ICC into a permanent, well-functioning court for the enforcement of international justice that will guarantee lasting respect for international law.

11. What do you believe are currently some of the major challenges facing the Court, and what do you believe will be some of the major challenges in the coming years?

In my view some of the major challenges confronting the Court in the coming years will be:

- *The International Criminal Court must, in particular through its own good work, establish and affirm its place as an internationally accepted judicial institution with, in the medium- and long-term, a universal vocation.*
- *Active and sustained efforts continue to be necessary to enlarge and to universalize the membership of the International Criminal Court.*

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- *Obtaining state cooperation for the exercise of the functions of the Court, especially the arrest and surrender of or accused persons.*

12. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions.

12 a) Members of the Coalition for the ICC and governments are concerned about the difficulties judges might experience in interpreting articles of the Rome Statute where their government has already expressed an opinion. Do you expect difficulties in your taking an independent position?

No.

12 b) Would you be able to judge impartially whether an investigation by your government was genuine?

Yes.

13. Victims have a recognized right to participation in the proceedings in the Rome Statute and to apply to the Court to award reparations under Article 75. What experience relevant to these provisions do you have?

As the Court may have to deal with this question now and in the future, and as I am a serving ICC judge, I believe it would be inappropriate for me to comment on this matter.

It should be borne in mind, however, that through my role as the German Chief Negotiator for the Rome Statute and its secondary instruments, I was actively and fully involved in the elaboration of the relevant provisions on victims' participation.

14. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked.

What experiences have you had dealing with crimes of sexual and/or gender violence? Are there situations or cases in the past where you believe you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted? If so, to what effect? Are there situations where you did not analyze the different impacts of a situation on women and men but on reflection you now think such an analysis would have been appropriate?

As the Court may have to deal with this question now and in the future, and as I am a serving ICC judge, I believe it would be inappropriate for me to comment on this matter.

It should be borne in mind, however, that through my role as the German Chief Negotiator for the Rome Statute and its secondary instruments, I was actively and fully involved in the elaboration of the relevant provisions on crimes of sexual and/or gender violence and related Elements of Crimes.

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I am also aware of the fact that in armed conflicts crimes committed against women are the ones most likely to go unpunished. This is why we cannot overestimate the historic significance of the inclusion of gender-related crimes and crimes of sexual violence in the Rome Statute of the International Criminal Court.

In this sense I intend to apply an appropriate gender perspective also in the conduct of the hearings and proceedings before the Court.

15 a) Did you help advocate for the adoption of human rights or international humanitarian law treaties or other instruments? Please describe your experience.

Apart from my strong and sustained advocacy for the Rome Statute and the ICC, I was, as Head of the Public International Law Division in the German Foreign Office, actively involved in the "travaux préparatoires" for the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and in the efforts undertaken through the French-German initiative for a convention prohibiting the cloning of human beings.

15 b) Have you served on the staff or board of directors of human rights or international humanitarian law organizations? Please describe your experience.

Since 1996 I continue to serve as a member of the National Advisory Committee of the German Red Cross Society on international humanitarian law.

16. Have you ever resigned from a position as a member of the bar of any country, or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.

No.

17. Have you ever been found after an administrative or judicial hearing to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances.

No.

18. It is expected that a judge shall not, by words or conduct, manifest, or appear to condone, bias or prejudice, including, but not limited to bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, court officials and others subject to his or her direction and control to refrain from such words or conduct.

Do you disagree or have difficulty with this expectation?

How will you be able to meet this expectation?

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I do not disagree with this expectation.

19. Judges will be elected for a term of nine years.

A judge is expected to be on the bench or otherwise handling legal matters for at least seven hours per day, five days per week, and at times, a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends.

Do you expect to be able, now and in the foreseeable future, to perform these tasks on your own or with reasonable accommodation? If no, please describe the circumstances.

As in the past in other functions I expect to be fully able to perform these tasks.

20. Do you know of any factors that would adversely affect your ability to competently serve as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume? If yes, please explain.

No.

Thank you.

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Annex: Selected publications

Related to the International Criminal Court

- “Developments at the International Criminal Court – Construction Site for More Justice: The International Criminal Court After Two Years” in *American Journal of International Law*, Vol. 99, No 2, April 2005.
- “Der Internationale Strafgerichtshof – eine Momentaufnahme”, in *Jahrbuch der Juristischen Gesellschaft Bremen*, Band 6, 2005, Ed. Temmen, pp. 7-15.
- “Der Internationale Strafgerichtshof: Auf dem Weg zu weltweit mehr Gerechtigkeit? Festvortrag anlässlich des Osnbrücker Friedenstages und des Tages der Vereinte Nationen”, in *Gerechtigkeit vor Gewalt, Osnabrücker Jahrbuch Frieden und Wissenschaft 12*, 2005, pp. 109-122.
- „Baustelle für mehr Gerechtigkeit – Der Internationale Strafgerichtshof in seinem zweitem Jahr“, Vereinte Nationen, No 4/2004, pp 1-9.
- „Der Internationale Strafgerichtshof- Stand und Perspektiven“, Vortrag bei der Jahrestagung der Deutschen Vereinigung für Internationales Recht, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Heidelberg, 18. Juni 2004, (available on request).
- „La Corte Penal Internacional“ in *Dialogo Politico*, Publicación trimestral de la Konrad-Adenauer Stiftung A.C. Año XXI - N° 3 (2004), pp. 11-28.
- „Germany: Methods and techniques used to deal with constitutional, sovereignty and criminal law issues”, in Roy S. Lee (ed.), *Giving Effect to the International Criminal Court: Methods and Techniques for Handling Issues of Criminal Law, Constitution, and Sovereignty*, (2005), pp. 65-82.
- “Der Internationale Strafgerichtshof- Das Vermächtnis von Nürnberg“, in Andreas Zimmermann (ed.), in: *Deutschland und die internationale Gerichtsbarkeit*, Veröffentlichungen des Walther-Schücking-Instituts für Internationales Recht an der Universität Kiel, Band 149, Duncker& Humblot, Berlin, 2004.
- „Substantive Criminal Law in the Rome Statute and its implementation in national legislation”, in ICRC/Damascus University Faculty of Law, *The*

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- International Criminal Court and Enlarging the Scope of International Humanitarian Law*- Damascus Symposium, 13-14 December 2003, (2004), pp. 277-306 (also published in Arabic).
- "Preconditions to the Exercise of Jurisdiction", in: Antonio Cassese et al. (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, pp. 583-618, Oxford University Press, 3 volumes, 2002.
 - "Der Internationale Strafgerichtshof: Eine Bestandsaufnahme in Frühjahr 2003", in: *Die Friedens-Warte – Journal of International Peace and Organization*, Volume 78 (2003), No. 1, pp. 11-270.
 - "The International Criminal Court - Current Perspective", in: Andreas Zimmermann (ed.), *International Criminal Law and the Current Development of Public International Law*, pp. 15-25, Veröffentlichungen des Walther-Schücking-Instituts für Internationales Recht an der Universität Kiel, Band 144, Duncker& Humblot, Berlin, 2003.
 - "The International Criminal Court", Country Report submitted by Germany to the XVIth Congress of the International Academy of Comparative Law, Brisbane, 14 - 20 July 2002, Section IV.A. Public International Law, in: Eibe Riedel, *Stocktaking in German Public Law - German Reports on Public Law*, Nomos-Verlag, 2002.
 - "Jurisdicción y cooperación en el Estatuto de la Corte Penal Internacional: Principios y Compromisos", Hans-Peter Kaul/Claus Kreß in: Kai Ambos et al., *La Nueva Justicia Penal Supranacional - Desarrollos post-Roma*, pp. 297-342, Valencia, 2002.
 - "Der Aufbau des Internationalen Strafgerichtshofs - Schwierigkeiten und Fortschritte", *Vereinte Nationen*, N° 6/2001, pp. 215-222.
 - "Der künftige Internationale Strafgerichtshof - Eine Hoffnung auf mehr Gerechtigkeit?", *Vortrag in München am 23. November 2001 bei der Veranstaltung des Landesverbandes Bayern der Deutschen Gesellschaft für die Vereinten Nationen (auf Anfrage erhältlich)*.
 - "Die Entwicklung des Völkerstrafrechts: Auf dem Weg zur Herrschaft des Rechts in den internationalen Beziehungen?", *Vortrag in Berlin am 15. Oktober 2001 anlässlich der Vorstellung des Buches "International and National Prosecution of Crimes Under International Law - Current Developments"*, *Humanitäres Völkerrecht*, N° 4/2001, pp. 251-254.

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- "The Continuing Struggle on the Jurisdiction of the International Criminal Court", in: Horst Fischer, Claus Kreß, Sascha Lüder (ed.), *International and National Prosecution of Crimes under International Law - Current Developments*, 2001, pp. 21-46.
- "The Crime of Aggression - Definitional Options for the Way Forward", in: Mauro Politi, Giuseppe Nesi (ed.), *The International Criminal Court and the Crime of Aggression*, Ashgate Publishing Ltd., 2004, pp. 97-108.
- "A Corte Internacional Criminal: A Luta pela sua Instalação e seus Esopos", in: Fauzi Hassan Choukr, Kai Ambos, *Tribunal Penal Internacional*, Editora Revista dos Tribunais Ltda., Sao Paulo, 2000, pp. 109-124.
- "Globalisierung und NGO's - am Beispiel der internationalen NGO-Koalition für den Internationalen Strafgerichtshof", *Referat bei der Konferenz der Deutschen Gesellschaft für Auswärtige Politik am 18. Januar 2001 zu "Globalisierung und NGO's: Zielsetzungen, Aktivitäten und Rolle der Nichtregierungsorganisationen"*, forthcoming in: *Berliner Schriften zur Internationalen Politik*, Leske+Budrich Verlag (jetzt VS Verlag), 2005.
- "Some Thoughts on the Jurisdiction System of the International Criminal Court", in *Conference Report of "No Peace without Justice" on the European Intergovernmental Conference, Rome, 17/18 July 2000, on the 2nd Anniversary of the Rome Statute*, in *European Conference on the Rome Statute of the International Criminal Court*, 2001, pp. 142-148.
- "Jurisdiction and Cooperation in the Statute of the International Criminal Court - Principles and Compromises", in *Yearbook of International Humanitarian Law*, vol. 2 (1999), pp. 143-175 (Co-Author Claus Kreß).
- "The International Criminal Court: Jurisdiction, Trigger Mechanism and Relationship to National Jurisdiction", in: Mauro Politi, Giuseppe Nesi (ed.), *The Rome Statute of the International Criminal Court - A Challenge to Impunity*, (2001), pp. 59-62.
- "The Crime of Aggression - Towards its Effective Inclusion in the Subject-Matter Jurisdiction of the International Criminal Court", in: S. Perrakis (ed.), *International Criminal Court- A new dimension in international justice. Questions and prospects for a new humanitarian order, Proceedings of the Santorini Colloquium*, Essays on

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the International Protection of Human Rights and International Humanitarian Law, Ant. T. Sakkoulas Publ. (2002), pp.105-113.

- "Special Note: The Struggle for the International Criminal Court's Jurisdiction", in: *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 6 (1999), N° 4, pp. 364-376. (also available in Spanish, see immediately below).
- "La Corte Penal Internacional: la lucha por su competencia y su alcance", in: Kai Ambos, Oscar Julián Guerrero, *El Estatuto de Roma de la Corte Penal Internacional*, Universidad Externado de Colombia, Bogota, October 1999.
- "Breakthrough in Rome – The Statute of the International Criminal Court", in *Law and State*, Vol. 59/60 (1999), edited by the *Institut für wissenschaftliche Kooperation*, Tübingen, pp. 114-130.
- "Völkerrechtlicher Vertrag und staatliches Recht – am Beispiel des Statuts über den Internationalen Strafgerichtshof" – Vortrag am 29. Januar 1999 bei dem Symposium der Universität Leipzig "Völkerrechtlicher Vertrag und staatliches Recht vor dem Hintergrund zunehmender Verdichtung der internationalen Beziehungen", in: *Leipziger Schriften zum Völkerrecht, Europarecht und ausländischen öffentlichen Recht*, Vol. 1 (2000), pp. 53-67.
- "Das Römische Statut des Internationalen Strafgerichtshofs: Auf dem Weg zu einer humaneren Weltordnung unter dem Schutz des Rechts?", *Schriftenreihe des Walther-Schücking-Kollegs* Nr. 22, Europa-Union-Verlag, Bonn, 1999.
- "Der Vertrag über den Internationalen Strafgerichtshof und seine Bedeutung für das Humanitäre Völkerrecht" – Vortrag am 11. September 1998 vor der 42. Tagung der Justitiare und Konventionsbeauftragten des Deutschen Roten Kreuzes (available on request).
- "Internationaler Strafgerichtshof – Ein bedeutender Anfang in Rom", in: *Menschenrechtsschutz in der Praxis der Vereinten Nationen*, von Gerhart Baum, Eibe Riedel, Michael Schäfer, 1998, pp. 273-278.
- "Der Internationale Strafgerichtshof: Das Ringen um seine Zuständigkeit und Reichweite", *Humanitäres Völkerrecht*, 1998, N° 3, pp. 138-144. This contribution is also published in *Völkerrechtliche Verbrechen vor dem Jugoslawien-Tribunal, nationalen Gerichten und dem Internationalen Strafgerichtshof - Beiträge zur Entwicklung einer effektiven internationalen Strafgerichtsbarkeit*, Bochumer

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Schriften zur Friedenssicherung und zum Humanitären Völkerrecht, von Horst Fischer, Sascha Rolf Lüder, Vol. 35 (1999), pp. 177-191.

- "Towards a Permanent Criminal Court – Some Observations of a Negotiator", *Human Rights Law Journal*, 1997, N° 5-8 vom 28. November 1997, pp. 169-174.
- "Durchbruch in Rom – Der Vertrag über den Internationalen Strafgerichtshof", *Vereinte Nationen*, 1998, N°4, pp. 125-130.
- "Auf dem Weg zum Weltstrafgerichtshof – Verhandlungsstand und Perspektiven", *Vereinte Nationen*, 1997, N° 5, pp. 177-181.
- "Establishment of a Permanent International Criminal Court", *A report on the state of negotiations presented at a hearing conducted by Alliance 90/Greens in Bonn on 30 June 1997* (available on request).
- "Das Vorhaben der Errichtung eines Ständigen Internationalen Strafgerichtshofs – Verhandlungsstand und Perspektiven" – *Vortrag am 30. Juni 1997 bei einer Veranstaltung von Bündnis 90/Grüne* (available on request).

Related to other fields of Public International Law

- "Article 27 of the Charter of the United Nations" (with Bruno Simma), in *The Charter of the United Nations - A Commentary, (2nd edition)*, edited by Bruno Simma (2002) pp. 476-522.
- "*Fink, Udo: Kollektive Friedenssicherung. Kapitel VII UN Charta in der Praxis des Sicherheitsrats der Vereinten Nationen*", Book review, in *Vereinte Nationen*, 1999, N° 3, pp. 114, 115.
- "Arbeitsweise und informelle Verfahren des Sicherheitsrats der Vereinten Nationen - Beobachtungen eines Unterhändlers", *Vereinte Nationen*, 1998 N° 1, (1998), pp. 6-13.
- "Die Sanktionsausschüsse des Sicherheitsrats - Ein Einblick in Arbeitsweise und Verfahren", *Vereinte Nationen*, 1996, N° 3, (1996), pp. 96-103.
- "37. Generalversammlung: Fortgang der Flüchtlingsinitiative der Bundesrepublik Deutschland", *Vereinte Nationen*, 1983, N° 3, (1983), pp. 91/92.

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- "UN-Friedenstruppen: Versuch einer Bilanz - Ein Diskussionsbeitrag aus deutscher Sicht in 33 Thesen", *Vereinte Nationen*, 1983, N° 1, (1983), pp. 1-7.
- "Das Staatshaftungsrecht der Schweiz", *Ländergutachten, Rechtsvergleichender Gutachtenband des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht*, (1976).
- "Das Arzneimittelrecht der Schweiz", *Ländergutachten, Rechtsvergleichender Gutachtenband des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht*, (1975).

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