Studies and Comments

About the international administrative law and other demons. A venture in a "delimiting law"

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Abstract

In scholarship, it was argued for existence of an "international administrative law" (internationales Verwaltungsrecht, diritto amministrativo internazionale, droit administrative international) as a special branch of municipal administrative law. Under this understanding, international administrative law constitutes a special (sub)discipline, providing for norms governing administrative relations with a foreign element. However, this concept wasn't overall accepted in the scholarship of administrative law and some authors have argued, international administrative law represents more a field of emerging study, than an established legal discipline. This article aims to discuss thorny issues of the concept and summarise dogmatic considerations, expressed vis-á-vis international administrative law in the scholarship. At the same time, this article aims to settle these dogmatical considerations and to present international administrative law as a "delimiting law", constituting a part of both substantive and procedural administrative law. Lastly, this article argues, that the parallel emergence of international administrative law in several jurisdictions echoes existence of this field as a part of an (administrative) ius commune.

Keywords: *international administrative law; delimiting law; delimiting norms; choice-of-law rules; dualism; isolationism in law; ius commune.*

JEL Classification: K23, K32

1. Introduction[2]

"International administrative law is an integral part of municipal administrative law".[3] This thesis, developed by Karl Neumeyer, aimed to establish a new (sub)discipline of municipal administrative law. Neumeyer argued, that international administrative law (*internationales Verwaltungsrecht*) represents a parallel to international private law. While international private law governs those relations of private law, where a certain foreign element appears, a similar field of law exists also in the area of administrative law. Thus, under this understanding, international administrative law represents a set of norms, governing those relations of administrative law, where any foreign element appears – a fact, which

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[3] Neumeyer, K., *Internationales Verwaltungsrecht, Allgemeiner Teil,* Verlag J. Schweitzer (A. Sellier), Zürich, 1936, p. III.

occurs abroad, a foreign act, which is to be recognised, a foreign subject, which is exempted from the scope of application of municipal administrative law. Hence, the term "international" – used in both international private law and in international administrative law – was intended to refer merely to this certain foreign element governed, and not to the field of international public law.

Consequently, very similar to the field of international private law, also international administrative law was developed upon an isolationistic approach. Neumeyer understood international administrative law as a special (sub)discipline of municipal administrative law. While other (sub)disciplines of administrative law – such as traffic law, police law, water law, mining law, or environmental law – emerged as autonomous fields, governing certain homogenous area of public administration, international administrative law had no such nature. On contrary, Neumeyer understood international administrative law as set of norms, being of cross-sectional character. Thus, international administrative law was - under this understanding – composed of norms belonging to various (sub)disciplines of administrative law (tax law, university law, traffic law, social security law etc.). The common feature of these norms were, that they governed a certain relation with a foreign element. For example, norms governing inclusion of foreign incomes under domestic tax obligations, norms governing recognition of foreign university diplomas, norms governing administrative offenses committed abroad – they all belonged – according to Neumeyer – under the umbrella of an "international administrative law".

The approach of Neumeyer gained certain reception in both contemporary and subsequent scholarship. So, Heinrich Triepel referred about international administrative law briefly in his monograph on mutual relations between international public law and municipal law. Here, he claimed, that this field represents "a collection of norms of municipal administrative law, which refer to "international" facts".[4] Umberto Borsi argued for existence of a special (sub)discipline of administrative law, which governs relations between the administration in inland and citizens and officiala abroad.[5] Fritz Reu argued[6] for existence of an international administrative law, governing administrative relations with certain foreign element. However, he claimed, that this international administrative law does neither belong to the family of international public law, nor to the family of administrative law. According to Reu, international administrative law represented a realm of law of its own – an autonomous field, governing relation of municipal executive power to elements of foreign character. On the other hand, Ernst Isay argued, that there is no factual difference between the substantive norms of municipal administrative law and the norms providing for rules on foreign elements. Consequently, Isay argued that international

[4] Triepel, H., *Völkerrecht und Landesrecht*, C. L. Hirschfeld, Leipzig, 1899 (reprint by Scientia Antiquariat, Aalen, 1958), p. 273.

[5] Borsi, U., *Carattere ed oggetto del diritto amministrativo internazionale*, "Rivista di diritto internazionale", 1912, vol. 6, pp. 378 et seqq.

[6] Reu, F., *Anwendung fremden Rechts. Eine Einführung*, Junker und Dünnhaupt, Berlin, 1938, pp. 102 et seqq.

administrative law represents an integral part of municipal administrative law.[7] Later, the issue was addressed also by Hans-Jürgen Schlochauer[8], who argued, that international administrative law represents - as an "entirety of delimiting norms" – an integral part of municipal administrative law. Also Zaccaria Giacometti reflected the thesis of Neumeyer by his handbook of administrative law.[9] However, he perceived international administrative law in a much restricted way, arguing, it is composed of a set of norms governing which foreign subject are governed by the municipal administrative law. The concept of international administrative law was also further elaborated by Ernst Steindorff. He argued, that "the body of international administrative law is composed of norms, which serve – based on their character – the same purpose, as the rules of choice-of-law in international private law".[10] Thus, this body of law governed "competence of domestic administrative authorities and field of application of municipal administrative law".[11]

The thesis of international administrative law as a special (sub)discipline of municipal administrative law gained no general acceptance in the subsequent decades. Firstly, one may note, that the topic was only rarely reflected in the mainstream scholarship of administrative law. If analysing the handbooks, addressing administrative law as an academic discipline, we may find only very rare references to international administrative law. Such was presented by Gerhard Hoffmann in the handbook on substantive administrative law, edited by Ingo Münch.[12] Also Thomas Fleiner-Geistler once argued in his handbook of administrative law, that "in fact, we can today refer about international administrative law as about an independent discipline."[13] The handbook on administrative law, edited by Dirk Ehlers, Hans-Uwe Erichsen and Martin Burgi[14], also contains a part on "international administrative law", which is here – however – understood as an umbrella term for several particular approaches. Most recently, a special section on international administrative law is to be found in handbook on administrative law of the European Union.[15] Fact is, that these are very rare exemptions. Most of the textbooks, dealing with administrative law in a comprehensive manner, do not mention the existence of any "international

[7] Isay, E., *Das deustche Fremdenrecht,* Verlag von Georg Stilke, Berlin, 1924, pp. 16 et seqq.

[8] Schlochauer, H., J., *Internationales Verwaltungsrecht,* in Giese, F. (ed.), *Die Verwaltung,* Braunschweig, 1956, pp. 1 et seqq.

[9] Giacometti, Z., *Alllgemeine Lehren des rechtsstaatlichen Verwaltungsrechts,* Polygraphischer Verlag, Zürich, 1960, pp. 22 et seqq.

[10] Steindorff, E., *Internationales Verwaltungsrecht,* in in Strupp, K. (ed.), *Wörterbuch des Völkerrechts,* De Gruyter, Berlin, 1962, pp. 581 et seqq.

[11] Ibid.

[12] Hoffmann, G., *Internationales Verwaltungsrecht,* in Münch, I. (ed.), *Besonderes Verwaltungsrecht,* De Gruyter, Berlin, 1985, pp. 851 et seqq.

[13] Fleiner-Gerster, T., *Grundzüge des allgemeinen und schweitzerischen Verwaltungsrecht,* 2nd ed., Schulthess, Zürich, 1980, § 10.

[14] Ehlers, D., Erichsen, H., Burgi, M., *Allgemeines Verwaltungsrecht,* 14th ed., De Gruyter, Berlin, 2010, pp. 188 et seqq.

[15] Terhechte, J., Möllers, C., *Europäisches Verwaltungsrecht und Internationales Verwaltungsrecht,* in Terhechte, J. (ed), *Verwaltungsrecht der Europäischen Union,* Nomos Verlag, Baden Baden 2019, pp. 1445 et seqq.

administrative law" at all. In principle, they leave all issues related to any international matters to the scholarship of international public law, or – more recently – EU administrative law.

However, the disinterest of the mainstream scholarship has been accompanied by criticism of the concept of international administrative law, as presented by Neumeyer. It was Otto Mayer, who reviewed[16] the first volume of Neumeyers monumental monograph in 1912, arguing that is merely contains a carefully designed inventory of existing statutory laws, without any systematic attempt to classify them. Emilio Bonaudi criticized[17] parallelisation with international private law, arguing that international administrative law represents an integral part of substantive administrative law of the State. On the other hand, José Gascon y Marin presented[18] a thesis that the choice-of-law rules governing administrative matters (*conflits des lois en matière administrative*) belongs exclusively to the realm of international private law. In the 1960s, Klaus Vogel repeated critical stance towards conception developed by Neumeyer, stating that "one can't oversee the mere fact, that Neumeyer failed to present an overall systematisation of his "international administrative law", as he provided only certain categorisations based on purely formal determinants".[19] Further, as Vogel claimed, the "attempt to present the system of international administrative law as a parallel to international private law clearly failed" and consequently, "the whole concept of international administrative law as autonomous discipline was put into question."[20] A decade later, Franz Matscher repeated these dogmatic considerations and questioned, whether there is any "international administrative law" at all.[21] Most recently, Eberhardt Schmidt-Aßmann argued [22] against the whole concept of "international administrative law", as developed by Neumeyer. Concerning the parallelisation to international private law, Schmidt-Aßmann claimed, that "this parallelization was askew from the outset. What is more, it has been the cause of some contention. The two fields pursue very different goals. "Thus, he required that "administrative law scholarship should abandon the inaccurate parallel and radically reorder the formation of terminology".[23]

This article aims to argue, that the concept of international administrative law as an integral part of municipal administrative law is a viable one. This approach is currently shared also by some other scholars of administrative law. While some of them argue for existence of an "international administrative law" as

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[16] Mayer, O., *Besprechung von Karl Neumeyer, Internationales Verwaltungsrecht I,* "Archiv des öffentlichen Rechts", 1912, vol., 28, p. 352.

[17] Bonaudi, E., *A proposito di „Diritto amministrativo internazionale",* "Annali della Facoltà di Giurisprudenza di Perugia", 1928, vol. 40, p. 133.

[18] Gascon y Marin, J., *Les transformations du droit administratif international,* "Recueil des Cours de l'Académie de la Droit International", 1930, vol. 34, pp. 21 et seqq.

[19] Vogel, K., *Der räumliche Anwendungsbereich der Verwaltungsrechtsnorm.* Alfred Metzner Verlag, Frankfurt am Main, 1965, p. 186.

[20] Ibid.

[21] Matscher, F., *Gibt es ein internationales Verwaltungsrecht?,* in Sandrock, O. (ed.), *Festschrift für Günther Beitzke,* De Gruyter, Berlin, 1979, pp. 641 et seqq.

[22] Schmidt-Aßmann, E., *The Internationalization of Administrative Relations as a Challenge for Administrative Law Scholarship*, "German Law Journal", 2008, vol., 9, p. 2077

[23] Ibid.

a "umbrella" (sub)discipline of municipal administrative law[24], others claim for emergence of particular (sub)disciplines – such as international tax law, international environmental law, international social security law, international banking law etc.[25] Fact is, that some recent scholars, reflecting disputes existing regarding the scheme of "international administrative law", propose a "rebranding" of the legal field as a solution. So, Christian Oehler argued[26] for the term "choice-of-law rules in administrative law". Other authors prefer the term "transnational administrative law" or "administrative international law".[27]

However, a "rebranding" of terminology itself is not able to address existing considerations. It is the content, what matters most, not a mere terminology. A conceptualisation of the field and its general acceptance as autonomous (sub)discipline of administrative law requires settlements of dogmatic considerations, that have been expressed in legal scholarship. Thus, this article aims to identify these considerations and to address them. In this concern, this article aims to argue, that by settlement of existing dogmatic considerations, no change of terminology is needed, as the term "international administrative law" (*internationales Verwaltungsrecht, diritto amministrativo internazionale, droit administrative international*) – with all existing scholarship behind it - is fully able to cover the desired field.

2. Dogmatical considerations revisited

The very classical approach to administrative law has been based on territorial understanding of this field of law. Consequently, the scholarship has understood the norms of administrative law as governing primary those relations, occurring in the territory of the State. Fact is, that some of these norms did traditionally also address those issues, occurring abroad – these were the cases of norms, governing service of diplomatic and consular officers, or providing for powers of police and customs officials in the border areas. However, the very classical approach to administrative law has left any issues, relating to the mutual relations between the sovereign States, to the scholarship of international public law.[28]

At the same time, the scholarship of administrative law has conceptualized

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[24] E.g. Breining-Kaufmann, C., *Internationales Verwaltungsrecht*, "Zeitschrift für schweizerisches Recht", 2006, vol. 125, issue 3, p. 72 („international administrative law represents a legal discipline *sui generis*"), Handrlica, J., *Revisiting international administrative law as a legal discipline,* "Zbornik Pravnog Fakulteta Sveučilišta u Rijeci", 2018, vol. 39, issue 3, pp. 1237-1258.

[25] See Möllers, C., Voßkuhle, A., Walter, C. (eds.), *Internationales Verwaltungsrecjht. Eine Analyse anhand von Referenzgebieten*, Mohr Siebeck, Tübingen, 2007.

[26] Oehler, C., *Die Kollissionsordnung des Allgemeinen Verwaltungsrechts,* Mohr Siebeck, Tübingen, 2005, p. 5.

[27] Kment, M., *Grenzüberschreitendes Verwaltungshandeln,* Mohr Siebeck, Tübingen, 2010, p. 5 (see ft. 17 for a exhaustive overview of references). See also Fischer-Lescano, A., *Transnationales Verwaltungsrecht,* "Juristenzeitung", 2008, pp. 373-383.

[28] Vogel, K., *Administrative Law: International Aspects,* in Bernhardt, R. (ed), *Encyclopedia of Public International Law, 9 – International Relations and Legal Co-operation in General*, North Holland, Amsterdam, 1986, pp. 2 et seqq.

some particular (sub)disciplines, governing special areas of public administration – such as traffic law, governing the rules of road, water and aviation traffic, mining law (*lex petrolea*), governing the rules of extraction of minerals, tax law, governing the rules of public taxes and charges for public services etc. Those jurisdictions, which have been influenced either by German, or Austrian tradition of administrative law, a treaties of these particular (sub)disciplines constitutes part of the so called "special part of administrative law".[29] Most recently, a number of these special subdisciplines became subject of increasing internationalization, either by the means of international public law, or EU law. In this respect, the concept of the "special part of administrative law" has been reflected also by the scholars of EU law.[30]

Thus, when aiming for a conceptualization of international administrative law as a special (sub)discipline of administrative law, principal dogmatic considerations expressed in scholarship towards this concept must be settled.

Firstly, the scope and subject of international administrative law must be delimited in a clear and transparent way. In particular, relations towards international public law must be clarified. A delimitation *vis-á-vis* other (sub)disciplines of municipal administrative law (such as tax law, social security law, traffic law etc.) must be provided by a clarification of legal character of norms involved. This issued will be addressed in the first section of this article.

Secondly, the nature of legal norms, constituting the body of international administrative law must be clarified. This issued will be addressed in the second section of this article.

Lastly, the autonomous character of international administrative law will be subject of attention. Fact is, that being understood as a part of municipal administrative law, international administrative law has been considered as a "national project" in legal scholarship. However, this perception of the field implies a question, whether there are any universal, or regional rules of international administrative law. This question will be addressed in the third section of this article.

2.1 Scope and subject of international administrative law

When arguing for existence of international administrative law as a particular (sub)discipline of administrative law, its scope and subject must be clarified firstly. When presenting his thesis on international administrative law, Neumeyer claimed that it is composed of norms of other substantive fields of administrative law – such as traffic law, water law, university law, mining law, tax law etc. Indeed, Neumeyer approached the issue of conceptualization of international administrative by addressing different fields of (then existing) substantive law of the German Empire in the first three volumes of his monumental

[29] Besonderes Verwaltungsrecht.

[30] See Hofmann, H., G., Rowe, G., C., Türk, A., C., *Specialised Administrative Law of the European Union. A Sectoral Review*, Oxford University Press, Oxford, 2018.

Internationales Verwaltungstecht.[31] Only afterwards, the fourth volume was aimed at addressing systematic issues of international administrative law as an academic discipline.[32]

Thus, Neumeyer's conceptualization of international administrative law was based on the thesis, each of the (sub)disciplines of administrative law contain specific norms governing relations with a foreign element. Consequently, under this understanding, international administrative law does not represent a homogenous field of law. Rather, it serves an auxiliary function. Therefore, Neumeyer labelled his international administrative law also as a "delimiting law" – a kind of "parallel" to international private law.

Neumeyer argued, that this "delimiting law" is composed of following types of provisions, which are to be found in the statutory laws of municipal administrative law: Firstly, there are "delimiting norms", which are decisive for the scope of application of the provisions of statutory laws. Secondly, the provisions of statutory laws may contain certain "references" to the foreign legal orders. Neumeyer ranked into the category of "references" all those cases, when provisions of statutory law provide for any linkage to the regulation, provided by foreign legal order. Thirdly, also provisions on recognition of foreign administrative measures may be provided, which also belong to the realm of international administrative law. Further, also those provisions, governing mutual assistance in administrative matters were ranked into the field of international administrative law. Lastly, Neumeyer argued[33] that the fifth category of norms is established by those norms, governing "any consideration of a foreign State".

At the same time, Neumeyer also provided for a strict delimitation of the field *vis-á-vis* other areas of law.[34] In particular, he argued, that instruments of international public law, governing certain matters of public administration, do not belong to the realm of international administrative law, but rather to the realm of international public law. In this respect, Neumeyer followed thesis, developed by Donato Donati, who proposed[35] a dualistic distinction between between *diritto international amministrativo* (being a part of international public law) and *diritto amministrativo internazionale* (being a part of municipal administrative law).

Further, neither the norms governing "external administration"¨- i.e. diplomatic and consular services, co-operation of municipal administrative

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[31] See Neumeyer, K., *Internationales Verwaltungsrecht, Innere Verwaltung I.,* J. Schweitzer Verlag, München, 1910 (passports, health and safety, societies and foundations, education, nobility, church), Neumeyer, K., *Internationales Verwaltungsrecht, Innere Verwaltung II.,* J. Schweitzer Verlag, München 1922 (natural resources, enterprises, social security), Neumeyer, K., *Internationales Verwaltungsrecht, Innere Verwaltung III.,* J. Schweitzer Verlag, München, 1926 (road traffic, rail traffic, inland water traffic, aviation traffic).

[32] Neumeyer, K., *Internationales Verwaltungsrecht, Allgemeiner Teil,* Verlag J. Schweitzer (A. Sellier), Zürich, 1936.

[33] Ibid, pp. 473 et seqq.

[34] Ibid, pp. 35 et seqq. and pp. 83 et seqq.

[35] Donati, D., *I trattati internazionali nel diritto costituzionale, vol. I.,* Unione Tipografico-Editrice Torinese, Torino, 1906, pp. 430 et seqq.

authorities with those abroad, delivery of administrative acts abroad etc. – were ranked into the field of international administrative law by Neumeyer.[36] In this regard, it was argued, that the extraterritorial nature of these norms does not necessary involve any foreign element, as a State is basically free to provide for rules to be applicable anywhere. Lastly, Neumeyer also explicitly excluded those provisions of statutory law, dealing with the status of foreigners[37] from the scope of international administrative law. Here, Neumeyer argued that except for cases where norms of statutory laws govern issues of foreign residence, or foreign immobility, the provisions addressing the status of foreigners belong to the ordinary municipal administrative law.

Fact is, that this way of delimitation of international administrative law wasn't fully shared in subsequent legal scholarship.[38] We should bear in mind, that while a dualistic distinction between *diritto international amministrativo* and *diritto amministrativo internazionale* was proposed by Donati, the author himself argued, that such a distinction is an artificial one: On one hand, any "international administration" has its base in the administration provided by a sovereign State. On the other hand, he argued that norms addressing any foreign element in the statutory laws are integral part to the distinctive (sub)disciplines of municipal administrative law (e.g. to tax law, social security law, traffic law) and consequently, there is no real need to distinguish *diritto amministrativo internazionale* from municipal administrative law.

Having these principal considerations regarding the delimitation of the scope of international administrative law in mind, it seems to be necessary to address them in deeper detail.

Ad 1)

Many matters of administrative law are being governed by the instruments of international public law. Here, it must be mentioned, that there has been a considerable number of scholars, arguing for much broader understanding of "international administrative law", than Neumeyer did. So, Prospero Fedozzi defined it as "a system of legal norms that governs the relations of administrative law between the State and other States on one hand and between the State and the foreigners."[39] Consequently, Fedozzi argued in favor of a larger understanding of the field, which will be including also the relations between the States in the area of public administration. Gascon y Marin shared this stance, when advocating[40] existence of his *droit administratif international.*

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[36] See Neumeyer, K., *Droit administratif international*, "Revue générale de droit international public", 1911, vol. 18, p. 498.

[37] Fremdenrecht, droit des étrangers, dirrito degli stranieri.

[38] See e.g. Vogel, K., *Der räumliche Anwendungsbereich der Verwaltungsrechtsnorm.* Alfred Metzner Verlag, Frankfurt am Main, 1965, pp. 181 et seqq.

[39] Fedozzi, P., *Il diritto amministrativo internazionale (nozioni sistematiche),* Unione tipografica, Perugia, 1901, p. 15.

[40] Gascon y Marin, J., *Les transformations du droit administratif international,* "Recueil des Cours de l'Académie de la Droit International", 1930, vol. 34, pp. 21 et seqq.

From the viewpoint of today, the works of Ernst Isay represent a valuable contribution to this discussion on mutual relations between international public law and international administrative law.[41] While perceiving international administrative law as an integral part of the municipal administrative law, Isay further elaborated which implications arise to this particular field from international public law. Here, Isay argued, that any administrative measures may be executed towards a foreign subject only in those cases, a corresponding instrument of international public law so provides. Thus, any such measure, executed without, or in contrary to such instrument, would be illegal. So, each mutual recognition of any administrative acts (such as passports, university diplomas, driver licenses) must stem from a corresponding instrument, being provided by international public law. Consequently, Isay linked the territorial understanding of municipal administrative law with the principle of sovereign equality of the States, which is provided by international public law. Several other authors shared this view, when arguing, that one can refer about "international administrative law" only in those cases, certain identical norms of administrative law exist in parallel in various jurisdictions. This was the view, presented by Fritz Stier-Somlo[42] and Renato Alessi.[43]

In the 1960s, this way of scholarship was further developed by Ricardo Monaco[44] and Giuseppe Biscottini. The latter elaborated the field in systematic way with respect to two problems: recognition of foreign administrative acts[45] and status of foreign persons in municipal administrative law.[46]

If analysing perception of international administrative law in the recent scholarship, we also easily find, that the perception of the field is much larger, than by Neumeyer. The term is being frequently used[47] to refer exclusively to instruments, governing administration of international organisations, which is – however – approach, that is very far from the scope of this article. Thus, a perspective of the recent scholarship of administrative law is more relevant here.

While some authors also recently refer to the strictly dualistic concept,

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[41] Isay, E., *Das deutsche Fremdenrecht*, Verlag von Georg Stilke, Berlin, 1924, id, *Internationales Finanzrecht*, W. Kohlhammer, Berlin und Stuttgart, 1934.

[42] Stier-Somlo, F., *Grundprobleme des internationalen Verwaltungsrechts*, "Internationale Zeitschrift für Theorie des Rechts", 1931, vol. 5, pp. 259 et seqq.

[43] Alessi, R., *Sistema istituzionale del diritto amministrativo italiano*, 2nd ed., A. Giuffré, Milano, 1958, p. 17.

[44] Monaco, R., *Manuale di diritto internazionale pubblico*, Utet Giuridica, Torino, 1960, pp. 29 et seqq.

[45] Biscottini, G., *Diritto amministrativo internazionale. La rilevanza degli atti amministrativi stranieri*, CEDAM, Padova, 1964.

[46] Biscottini, G., *Diritto amministrativo internazionale. La circolazione degli uomini e delle cose*, CEDAM, Padova, 1966.

[47] See e.g. Kinney, E., D., *The emerging field of international administrative law: ist content and potential*, "Administrative Law Review", 2002, vol. 56, issue 1, pp. 415 et seqq., De Cooker, C., *The effectiveness of international administrative law as a body of law*, "Queen Mary Studies in International Law", 2012, vol. 8, pp. 319 et seqq., Thomas, M., S., Elias, O., *The role of international administrative law*, "Queen Mary Studies in International Law", 2012, vol. 8, pp. 397 et seqq.

developed by Neumeyer, others argue for a broader delimitation of the field of international administrative law. So, Christian Tietje presented[48] a concept, presenting "international administrative law" as a branch of public law, based on reception of obligations arising from international agreements into the municipal administrative law. This way of understanding was followed also by Dirk Ehlers[49] in his contribution on the topic in the handbook on general administrative law. In this respect, Eberhardt Schmidt-Aßmann[50] pleaded for a new conceptualization of the field. He argued, Neumeyers' parallelisation to international private law is inaccurate, as "the two fields pursue very different goals. Most notably, international administrative law, thus understood, does not deal with choice of law among various legal orders."[51] Thus, Schmidt-Aßmann proposed that "international administrative law is to be understood as the administrative law originating under international law. It involves processes of reshaping national law and reconstructing international law; these processes resemble Europeanization in their structures (but not in their mechanisms). As a matter of clarification, it is worth noting that none of this changes the fact that national administrative law remains the main point of orientation for the practical administrative activity of most agencies. (…) For the newly defined international administrative law, I would propose—in continuance of research on European administrative law - three main functional circles: it is a body of law governing international administrative institutions, a body of law determinative of national administrative legal orders, and a body of law on cooperative handling of specific associative problems."[52]

With respect to the various opinions on the subject and scope of international administrative law, as expressed the legal scholarship, this article aims to argue for following delimitation of the topic:

Firstly, both earlier (Neumeyer, Isay and Biscottini) and recent (Schmidt-Aßmann) scholars, dealing with the field, share the opinion, the backbone of international administrative law is composed of norms, belonging to municipal administrative law, rather than to international public law. Even if reflecting the strict dualistic approach of Neumeyer, we cannot neglect the fact, that many norms of municipal administrative law, addressing certain foreign element, do in dualistic systems follow obligations arising from international public law. The norms, providing for mutual recognition of foreign acts, considered as integral part of international administrative law by Neumeyer, represent a salient example. So, provisions requiring domestic recognition of foreign driver licences, pilot certificates, laisses-passer for a corpse etc. – they all reflect a corresponding international agreement. Most recently, a myriad of such provisions emerged under the umbrella of the "union of composite administration", established within the

[48] Tietje, C., *Internationalisiertes Verwaltungshandeln,* Mohr Siebeck, Tübingen, 2001.
[49] Ehlers, D., Erichsen, H., Burgi, M., *Allgemeines Verwaltungsrecht,* 14th ed., De Gruyter, Berlin, 2010, pp. 188 et seqq.
[50] Schmidt-Aßmann, E., *The Internationalization of Administrative Relations as a Challenge for Administrative Law Scholarship,* "German Law Journal", 2008, vol., 9, pp. 2077 et seqq.
[51] Ibid.
[52] Ibid.

EU.[53] Having these facts in mind, we can only barely argue for an interpretation, international administrative law and international public law are two autonomous and not interconnected fields. On contrary, norms of international administrative law do frequently represent reception of the obligations, arising from instruments of international public law. In this respect, the earlier approach of Isay, pleading for reflection of basic principles of international public law within the conceptualisation of international administrative law, seems to represent a balanced stance.

Secondly, when reflecting the norms of municipal administrative law as the backbone of international administrative law, we have to address existence of those norms, providing for co-operation between domestic and foreign administrative authorities. Fact is, that also Neumeyer paid[54] attention to these norms, however, without linking them to the field of international public law. Recently, when presenting his "plea for a new international administrative law"[55], Schmidt-Aßmann argued, that "the law on internationalized administrative relations will yet need to be newly conceptualized, but it should henceforth be understood as the core of international administrative law."[56] In this regard, he proposed "centring the legal questions of internationalized administrative relations on forms, procedures, and principles".[57]

One can certainly agree with Schmidt-Aßmann that the field of "internationalized administrative relations" gains on importance recently. However, this article does not share the concept, presented by the latter author, that the "law of internationalized administrative relations" is predestined to represent a core of international administrative law. This field certainly represents a part of international administrative law in its modern understanding.[58] Consequently, this article aims to argue, that norms of municipal administrative law, providing for a competence of domestic administrative authorities to co-operate with authorities abroad, do represent a particular area of international administrative law. The foreign authority here represents a "foreign element" and therefore, ranks discussed norms into the realm of international administrative law.

Thirdly, instruments of international public law frequently provide to norms, governing administration of international organisations. While certain like of scholarship did also here refer about "international administrative law"[59], this

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[53] See Sydow, G., *Verwaltungskooperation in der Europäischen Union,* Mohr Siebeck, Tübingen, 2004, pp. 122 et seqq.

[54] Neumeyer, K., *Internationales Verwaltungsrecht, Allgemeiner Teil,* Verlag J. Schweitzer (A. Sellier), Zürich, 1936, pp. 351 et seqq.

[55] Schmidt-Aßmann, E., *The Internationalization of Administrative Relations as a Challenge for Administrative Law Scholarship,* "German Law Journal", 2008, vol., 9, pp. 2076.

[56] Ibid.

[57] Ibid, p. 2073.

[58] See Ehlers, D., Erichsen, H., Burgi, M., *Allgemeines Verwaltungsrecht,* 14th ed., De Gruyter, Berlin, 2010, pp. 190 et seqq.

[59] See e.g. Amerasinghe, C., F., *The future of international administrative law,* "International and Comparative Law Quarterly", 1996, vol. 45, issue 4, pp. 773 et seqq., Dyzenhaus, D., *The rule of (administrative) law in international law,* "Law and Contemporary Problems", 2005, vol. 68, issue

article aims to argue that this field belong entirely to the realm of international public law. Neither the rules of EU law, governing administration of EU institutions and agencies can be ranked into international administrative law, as they do not concern any rules of municipal administrative law.

Ad 2)

Various approaches to the relation towards international public law were expressed in legal scholarship. However, a diversity of approaches can be identified also with respect to the question of mutual relations between substantive administrative law[60] and international administrative law.

Neumeyer argued for a strict separation of these two fields of law. [61] In this respect, he argued, that while law of third-country nationals[62] belongs basically to the field of substantive administrative law, it cannot be considered a part of international administrative law, which is a "delimiting law". This approach – arguing for a strict separation of international administrative law and substantive administrative law, gained considerable reception by both scholars of public and private law. In the scholarship of administrative law, this approach was followed in particular by Rudolf Herrmann von Herrnritt[63] and Fritz Reu. The latter argued that international administrative law represents a field of law of its own[64], existing independently from the substantive administrative law.[65]. This approach was also quite regularly reflected in the scholarship of international private law.[66]

Fact is, that this approach has not been consequently followed in legal scholarship. Emilio Bonaudi criticized[67] parallelisation with international private law, arguing that international administrative law represents an integral part of substantive administrative law of the State. Isay argued, that the difference between

3-4, pp. 127 et seqq., Hennis, E., *Case practice in international administrative law,* "Leiden Journal of International Law", 1997, vol. 10, issue 2, pp. 295 et seqq. For terminological clarification see Handrlica, J., *Two faces of „international administrative law",* "Tribuna Juridica – Juridical Tribune", 2019, vol. 9, issue 2, pp. 363-376.

[60] Materielles Recht, droit substantiel, diritto sostanziale.

[61] Neumeyer, K., *Internationales Verwaltungsrecht, Allgemeiner Teil,* Verlag J. Schweitzer (A. Sellier), Zürich, 1936, pp. 83 et seqq.

[62] Fremdenrecht, droit des étrangers, dirrito degli stranieri.

[63] Herrnritt, R., *Grundlehren des Verwaltungsrecht: mit vorzugsweiser berücksichtigung der in Österreich (Nachfolgestaaten) geltenden rechtsordnung und praxis dargestellt,* Mohr Siebeck, Tübingen, 1925, pp. 101 et seqq.

[64] Zwischenverwaltungsrecht.

[65] Reu, F., *Anwendung fremden Rechts. Eine Einführung,* Junker und Dünnhaupt, Berlin, 1938, pp. 102 et seqq.

[66] See e.g. Bar, L., *Internationales Privat-, Straf- und Verwaltungsrecht mit Einschluss des Zivilprozess- und der Strafprozessrechtes,* in Holtzendorff, F., Kohler, J. (eds.), *Enzyklopädie der Rechtswissenschaft,* 7th ed., Duncker & Humblot, Berlin, 1924, pp. 278 et seqq., Lippert, G., *Handbuch des Internationales Finanzrechts,* 2nd ed., Oesterreichische Staatsdruckerei, Vienna, 1928, p. 11 (arguing, that international tax law belongs to the realm of international private law), Niboyet, J., P., *Les doubles impositions au point de vue juridique,* "Recueil des Cours de l'Académie de la Droit International", 1930, vol. 31, pp. 44 et seqq. etc.

[67] Bonaudi, E., *A proposito di „Diritto amministrativo internazionale",* "Annali della Facoltà di Giurisprudenza di Perugia", 1928, vol. 40, p. 133.

"delimiting law" and substantive administrative law cannot be overestimated. "While a differentiation between choice-of-law rules and rules of substantive law in private law is extremely practical, a similar differentiation is pointless in administrative law".[68] Vogel argued that whereas international private law is constituting by two-sided choice-of-law which on logical grounds cannot be part of the law to be chosen (the substantive law), there is no choice-of-law in administrative matters and, consequently, no necessity to separate "delimiting rules". Statutory provisions delimiting administrative law more often than not are embodied in substantive law, since this delimitation is prerequisite for the application of substantive administrative law. Such provisions are considerably less abstract, that those of international private law and are more closely connected to the structure and policies of the substantive law in question. "It follows from this (frustrating through this may be for a specialist in conflicts law) that it will be at least impractical, and to large extent impossible to treat these provisions separately from substantive law, since they fail to constitute a province of law of their own."[69] Consequently, Vogel argued that international administrative law cannot represents an autonomous, from the substantive administrative law strictly separated branch of public law. On contrary, international administrative law represents its integral part.[70] The current scholarship[71] also shares the viewpoint of Vogel.

Consequently, argument regarding distinction between international administrative law and substantive administrative law must be understood in following way:

From the formal viewpoint, most of the norms of international administrative law are to be found in statutory laws, belonging to the respective fields of substantive administrative law. We can barely find any autonomous statutory laws, governing exclusively the issues of international administrative law – as is the regular case in the field of international private law. International administrative law basically lacks any harmonization in separate statutory laws and has – in principle – a fragmented nature.

From the material point of view, we may argue that international administrative law has an auxiliary function. It is comprised of norms, belonging to various fields of substantive law. So, norms providing for recognition of foreign university diplomas are part of statutory laws, governing university education. Norms, providing for exemption of diplomatic corps from tax duties are part of statutory laws, governing tax law. Norms, providing for responsibility of citizens for offenses committed abroad are part of the statutory law, governing

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[68] Isay, E., *Internationales Verwaltungsrecht,* in Stier-Solmo, F., Elster, A. (eds.), *Handwörterbuch der Rechtswissenschaft,* Bd. 3, De Gruyter, Berlin, 1928, pp. 346 et seqq.

[69] Vogel, K., *Administrative Law: International Aspects,* in Bernhardt, R. (ed), *Encyclopedia of Public International Law, 9 – International Relations and Legal Co-operation in General*, North Holland, Amsterdam, 1986, p. 5.

[70] Vogel, K., *Der räumliche Anwendungsbereich der Verwaltungsrechtsnorm.* Alfred Metzner Verlag, Frankfurt am Main, 1965, pp. 312 et seqq.

[71] Menzel, J., *Internationales Öffentliches Recht, Verfassungs- und Verwaltungsgrenzrecht in Zeiten offener Staatlichkeit,* Mohr Siebeck, Tübingen, 2011, pp. 21 et seqq.

administrative offenses etc. We may state that international administrative law has both auxiliary and a cross-cutting character. The latter implied that scholarship[72] argued for emergence of various (sub)fields, such as international tax law, international traffic law, international aviation law etc.

Ad 3)

Lastly, a question arises, whether the realm of international administrative law concerns only norms of substantive law, or it concerns also procedural administrative law. While Neumeyer did paid mostly attention to mutual relations between international administrative law and substantive administrative law, he also briefly referred to rules addressing "foreign elements" in procedural law.[73] The issue was only rarely addressed in the subsequent scholarship.[74] Most recently, the issue became subject of attention with respect to the topic of mutual recognition of administrative acts.

Fact is, that we may find a number of norms, addressing foreign elements, also in provisions of procedural administrative law. So, such provisions do regularly address the issue of delivery of administrative acts to abroad. Also, the provisions of procedural law have to address the issue of qualification of foreign administrative acts, when these are being recognised in inland. Consequently, this article argues, that the mutual relation between international administrative law and procedural administrative law is very much the same, as the above outlined relation between international administrative law and substantive administrative law.

2.2 Legal norms of international administrative law

The character of legal norms, composing international administrative law, has been subject of severe academic polemics. While being composed of norms substantially belonging to various (sub)disciplines of administrative law, the common feature of all these norms was – as argued by Neumeyer – their "unilaterality".[75] The notion of "unilaterality" was used to refer to two following issues:

Firstly, "unilaterality" referred to the fact, a State can and must apply only its own administrative law (*auctor regit actum*). This concept has been also referred as the "unity of forum and law" in administrative law. Consequently, the competent administrative authority of the State must apply exclusively its own municipal administrative law, when dealing with any issue of public law.

Secondly, the term was further used with respect to the *formal* structure of international administrative law. The notion of "unilaterality" was conceptualized

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[72] See Möllers, C., Voßkuhle, A., Walter, C. (eds.), *Internationales Verwaltungsrecjht. Eine Analyse anhand von Referenzgebieten*, Mohr Siebeck, Tübingen, 2007.

[73] Neumeyer, K., *Internationales Verwaltungsrecht, Allgemeiner Teil*, Verlag J. Schweitzer (A. Sellier), Zürich, 1936, pp. 153 et seqq.

[74] See e.g. König, K., *Die Anerkennung ausländischer Verwaltungsakte*, Carl Heymanns Verlag, Köln, 1965, pp. 32 et seqq.

[75] Neumeyer, K., *Internationales Verwaltungsrecht, Allgemeiner Teil*, Verlag J. Schweitzer (A. Sellier), Zürich, 1936, pp. 266 et seqq.

by Neumeyer as a contradiction to the "bilaterality" of private law. Thus, while in the matters of private law, the States do regularly allow for application of foreign private law, such approach is not being approved when dealing with the relations of administrative law. The State does – in principle – not allow for application of foreign administrative law by its own administrative authorities. Allowing application of foreign administrative law to administrative relations in inland would obviously undermine territorial sovereignty of the State, as a foreign State will became empowered to establish binding rules applicable in the territory of another State. Consequently, the feature of "unilaterality" basically reflects the concept of the territorial sovereignty of the State, where the State has both the jurisdiction to prescribe (i.e. issue binding norms) and the jurisdiction to enforce (i.e. enforce these norms) over its own territory.

Fact is that the reception of the thesis on "unilaterality" was – basically - twofold: On one hand, a part of scholarship has argued, that "unilaterality" of international administrative law constitutes a strict barrier to any application of foreign administrative law by domestic authorities. On the other hand, there has been a parallel line of scholarship, arguing against a strict "unilaterality" in international administrative law. Pursuant to this line of argumentation, international administrative law is also composed of choice-of-law rules, which provide for applicable law – domestic, or foreign one.

Ad 1)

The concept of "unilaterality", as developed by Neumeyer, was widely receipted in legal scholarship. The notion, that there is no choice-of-law in international administrative law, was subsequently accepted by scholars in Germany[76] and abroad.[77]

The concept was further developed by Klaus Vogel. He argued, there is no room for any choice-of-law in administrative law at all.[78] "When specific legal relations between a State and its subjects are concerned, i.e. in public law, the application of a foreign law, as a rule, will not be considered. (…) The general

[76] See e.g. Bar, L., *Internationales Privat-, Straf- und Verwaltungsrecht mit Einschluss des Zivilprozess- und der Strafprozessrechtes,* in Holtzendorff, F., Kohler, J. (eds.), *Enzyklopädie der Rechtswissenschaft,* 7th ed., Duncker & Humblot, Berlin, 1924, pp. 279 et seqq., Siehr, K. *Ausländische Eingriffsnormen im inländischen Wirtschaftskollisionsrecht,* "Zeitschrift für ausländisches und internationales Privatrecht", 1988, vol. 52, issue 1/2, pp. 41 et seqq., Wolf, U., *Deliktsstatut und internationales Umweltrecht,* Duncker & Humblot, Tübingen, 1995, pp. 399 et seqq., Niedobitek, M., *Das Recht der grenzüberschreitenden Verträge,* Mohr Siebeck, Tübingen, 2001, pp. 366 et seqq., Dutta, A., *Durchsetzung öffentlichrechtlicher Forderungen ausländischer Staaten durch deutsche Gerichte,* Mohr Siebeck, Tübingen, 2006, pp. 399 et seqq.

[77] See e.g. Rapisardi Mirabelli, A., *Diritto internazionale amministrativo,* Casa Editrice dott. Antonio Milani, Padova, 1939, pp. 70 et seqq., Schnyder, A., K., *Wirtschaftskollisionsrecht: Sonderanknüpfung und extraterritoriale Anwendung wirtschaftsrechtlicher Normen unter Berücksichtigung von Marktrecht,* Schulthess, Zürich, 1990, pp. 45 et seqq. etc.

[78] Vogel, K., *Administrative Law: International Aspects,* in Bernhardt, R. (ed), *Encyclopedia of Public International Law, 9 – International Relations and Legal Co-operation in General,* North Holland, Amsterdam, 1986, pp. 4 et seqq.

attitude of the modern State to private law, i.e. that it is prepared to apply and enforce foreign as well as its own law, cannot be compared to – much less equated with – the very special reasons which in extremely rare cases may induce a legislator to order for application of foreign public law by administrative authorities. It would seem more appropriate (and more in accordance with legal philosophy) to interpret this type of reference as one of substantive law, as if enacting a domestic rule similar to the foreign one."[79] Absence of any choice-of-law rules in international administrative law had – according to Vogel – considerable consequences.[80] Thus, when applying the concept of "unilaterality" in a consequent way, we can barely speak about any problem of qualification in international administrative law.[81] Neither the problem of referral, or the problem of approximation does exist in international administrative law under this approach.[82] The approach is being followed by some scholars also today.[83]

Ad 2)

On the other hand, there has been an important line of scholarship arguing for possibility of application of foreign administrative law also by domestic administrative authorities. [84] So, the scholarship has addressed the fact, provisions of municipal administrative law do explicitly refer to provisions of foreign administrative law. So, statutory laws in the area of tax law may refer to those incomes, which are subject of tax obligations abroad. Also, statutory laws may provide for such terms, which can be interpreted either by application of domestic, or foreign administrative law. For example, in a case of a physician, exercising his profession in two different States, a question arises, which law will be decisive for the content of the pledge of secrecy. In case of a person, entitled from a foreign driving license, a question arises, which obligations he has to fulfill when driving abroad etc.

Thus, when a reference to foreign law is not direct one, one has to decide which legal framework is to be applied. In this regard, Isay[85] and Steindorff[86] argued, that the norms of international administrative law cannot be considered exclusively as "unilateral". Thus, they both argued that international administrative law contains – in similar fashion as international private law – also choice-of-law

[79] Ibid, p. 4.
[80] Vogel, K., *Der räumliche Anwendungsbereich der Verwaltungsrechtsnorm.* Alfred Metzner Verlag, Frankfurt am Main, 1965, p. 311.
[81] Ibid.
[82] Ibid.
[83] Hemler, A., *Die Methodik der "Eingriffsnorm" im modernen Kollisionsrecht: Zugleich ein Beitrag zum Internationalen Öffentlichen Recht und zur Natur des ordre public,* Mohr Siebeck, Tübingen, 2019, pp. 66 et seqq.
[84] See Handrlica, J., *Foreign law as applied by administrative authorities,* "Zbornik Pravnog Fakulteta u Zagrebu", 2018, vol. 68, issue 2, pp. 193-215
[85] Isay, E., *Zwishenprivatrecht und Zwischenverwaltungsrecht,* in Zitelmann, E., Stier-Somlo, F. (ed), *Festgabe für Ernst Zitelmann,* Duncker & Humblot, Berlin, 1913, pp. 299 et seqq.
[86] Steindorff, E., *Internationales Verwaltungsrecht,* in Strupp, K. (ed.), *Wörterbuch des Völkerrechts,* De Gruyter, Berlin, 1962, pp. 582 et seqq.

rules.

Fact is, that even the scholars belonging to the first line of argumentation had acknowledged, that a norm of municipal administrative law (which has been labelled as "a reference"[87]) may require for application of foreign administrative law.[88] Neumeyer labelled such a foreign norm, which is to be applied by the domestic administrative authorities, as an "intervening norm".[89] Most recently, Christoph Oehler argued[90] that while existence of such "references" (= choice-of-law rules), requiring for an application of (foreign) "intervening norms" was quite rare in the past, the current legislation provides for increasing number of these situation. In this respect, Oehler proposed a classification of the choice-of-law rules in administrative law into following groups: (i) those governing application of foreign administrative law by domestic administrative authorities in inland, (ii) those governing application of domestic/foreign administrative law by foreign administrative authorities in inland and (iii) those governing application of domestic/foreign administrative law by domestic administrative authorities, when executing their competences abroad.[91] Consequently, the emergence of the choice-of-law rules in international administrative law is merely matter of the development of law, which currently requires for an application of foreign law in increasing number of situations.

The argumentation of Oehler[92] seems to be persuasive and consequently, this article argues that international administrative law is established by a set of norms, which may – under certain circumstance – require application of foreign administrative law. However, such application must be always required by the norms of municipal administrative law.

2.3 International administrative law as a "national project"

The fact, international administrative law has been developed a kind of parallel to the international private law, implied inevitable conceptualization of the latter field as a "national project". Very recently, Alberto H. Neidhardt described the classical approach to international private law in following way:

"The resilience of the classical dogma of isolation means that private international law is typically understood, and examined, as a discipline and set of rules which are impermeable to legal and institutional developments taking place outside its alleged natural and permanent borders, in the contemporary age as well as in the past. Developments in the discipline are considered separately from changes in public international law, but also from those occurring in family law, or

[87] Verweisung.
[88] See Vogel, K., *Der räumliche Anwendungsbereich der Verwaltungsrechtsnorm.* Alfred Metzner Verlag, Frankfurt am Main, 1965, p. 196.
[89] Eingriffsnorm.
[90] Oehler, C., *Die Kollissionsordnung des Allgemeinen Verwaltungsrechts*, Mohr Siebeck, Tübingen, 2005, pp. 15 et seqq.
[91] Ibid.
[92] Ibid.

in the law of the economy, as each of these disciplines would be endowed with a separate set of methodological tools, underlying principles and systemic objectives.12 Isolation translates in well-established external limits as well as internal structure. The discipline is still generally organised along the conceptual schemes and legal divisions in which 19th century jurists placed those rules (marriage, contract, property etc). In historical terms, this means that most accounts report the chronological development of conflict doctrines and techniques falling within its boundaries, without attention to institutional and cultural changes occurring in the background."[93] In fact (to paraphrase Moliére's *Le Bourgeois Gentilhomme*), the author here not only described the very traditional approach to international private law, but also perfectly identified the classical understanding to its less famous *doppelgänger* –international administrative law - without necessarily knowing it.

Indeed, international administrative law, as understood by Neumeyer and the scholars who followed him, was perceived as an integral part of the municipal law, i.e. an isolated discipline. When understanding "international administrative law" in the sense, delimited by Neumeyer, we can barely come to conclusion on existence of any "international administrative law" of supra-national nature. On contrary, a certain "splendid isolation" was very inherent to this concept of international administrative law. In this respect, even using the English term "international administrative law" may seem to be misleading. One should rather refer to the *internationales Verwaltungsrecht* (international administrative law of Germany), *diritto amministrativo internazionale* (international administrative law of Italy), *droit administratif international* (international administrative law of France), *internasjonal forvaltingsrett* (international administrative law of Norway) etc. Consequently, this understanding of international administrative law followed a dualistic approach, which differs between international public law and municipal law.

Taking this approach into consideration, several issues arise, which do interfere with the notion of international administrative law being purely a "national project". In this respect, in particular following three concerns arise: Firstly, a question arises whether one may argue on existence of an international administrative law as a part of a (administrative) *ius commune*. Secondly, one may ask to which extent the existing instruments of international public law do provide for certain level of harmonisation of rules in the field of international administrative law. Thirdly, the same question arises also with respect to the EU law. Thus, the emergence of an "EU international administrative law" is being questioned in the legal scholarship.

Ad 1)

Firstly, a fact is that the scholarship refers on the existence of an international administrative law in several jurisdictions. Here, both the German, the Italian and the French administrative law works with certain set of legal norms,

[93] Neidhardt, A., H., *The Transformation of European Private International Law. A Genealogy of the Family Anomaly*, Ph.D. thesis, European University Institute, Florence, 2018, pp. 27-28.

governing administrative relations where any foreign element appears.[94] These legal norms emerged as a consequence of legal traditions existing in various jurisdictions. The emergence of various systems of international administrative law can be regarded as spontaneous reaction to growing need to address existence of foreign elements in domestic administrative relations. At the same time, they also reflect mutual relations between municipal law and international public law in various jurisdictions. So, the influence of international agreements can be regarded as important, albeit not decisive. Consequently, one may argue that the emergence of international administrative law in various discusses jurisdictions is reflection of existing *ius commune*. In this respect, this article argues that the emergence of international administrative law (*internationales Verwaltungsrecht, diritto amministrativo internazionale, droit administratif international*) reflects existence of legal features, which do exist parallelly in various legal traditions, without being necessary harmonised by written forms of supra-national law.[95]

A feature of "recognition" may further enlighten this line of argumentation. The norms, providing for a recognition of foreign administrative acts do exist in various jurisdictions. Many cases of recognition do have mutual character and consequently, they reflect certain obligations arising from existing bi-lateral, or multilateral agreements. However, we may also find cases, when municipal administrative law provides for legal effects of a foreign administrative act just because of societal, economic or cultural necessity, i.e. without being linked to any international agreements.[96] A parallel appearance of the feature of recognition underlines the argument, the norms of international administrative law did spontaneously emerged as a consequence of shared legal traditions, without being necessary interlinked with a written framework of supra-national law.[97] Also, with respect to the feature of "recognition", we may identify parallelly existing features of "refusal of recognition" in various jurisdictions. As we can barely identify any harmonised approach to this issue under international public law, the feature of "refusal" is basically reflecting instruments arising from traditions of municipal administrative law in the concerned jurisdiction.

This article argues, that we may observe a parallel emergence of different systems of international administrative law in various jurisdictions. These systems do constitute integral parts of municipal administrative law in the concerned jurisdictions. However, the existence of parallelly existing legal features lead to the conclusion, international administrative law is – at the same time – part of a (administrative) *ius commune*, existing in the European legal space.[98]

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[94] See Biaggini, G., *Die Entwicklung eines internationalen Verwaltungsrechts als Aufgabe der Rechtswissenschaft*, in *Die Leistungsfähigkeit der Wissenschaft des Öffentlichen Rechts*, De Gruyter Recht, Berlin, 2007, pp. 413-416.

[95] See Blanke, H.-J., Villalón, P., C., Klein, T., Ziller, J., *Common European Legal Thinking: Essays in Honour of Albrecht Weber*, Springer International Publishing, Vienna, 2015, p. 85.

[96] See Handrlica, J., *Revisiting international administrative law as a legal discipline*, "Zbornik Pravnog Fakulteta Sveučilišta u Rijeci", 2018, vol. 39, issue 3, p. 1256.

[97] See Servulo Correia, J., M., *The major traits of administrative law in the 21st century*, "A&C Revista de direito administrative & constitucional", 2016, vol. 16, issue 63, p. 66.

[98] See also Giesen, I., *Towards a Ius Commune 3.0.*, "Maastricht Journal of European and Comparative Law", 2013, vol. 20, issue 2, pp. 159-167.

Ad 2)

Secondly, there is a question of a "internalization" of international administrative law. While conceptualizing international administrative law as a "national project", the question appeared, to what extent one may argue for existence of any universal rules in this area. It is a matter of fact, that international public law provides for certain very principal rules applicable in the field of international administrative law. So, the very principal rule, prohibiting any unilateral administrative activity of the State towards other sovereign States, represents a backbone of this particular (sub)discipline of administrative law.

At the same time, one can only barely argue for any comprehensive set of rules, established in the discussed field by the instruments of international public law.[99] Certain harmonisation has been achieved in some fragmental areas, such as in the field of mutual recognition of driving licences. However, even in this area, we face a myriad of instruments[100], with various participation by existing States. Fact is, that while these instruments of international public law do provide for certain uniform standards in these fragmented areas, these standards are stull subject of reception into municipal administrative law in dualistic models.

Consequently, we can only barely refer to any comprehensive "internationalization" (or "conventionalization") of international administrative law.

Ad 3)

The same conclusions can be presented towards the regional framework, as established under the EU law. Also here, we may find certain fields, where a fragmental harmonisation has been achieved. Consequently, echoing the discussion on emergence of an "EU international private law", some authors argued for a parallel development also in the field of international administrative law.[101] However, if referring to an "EU international administrative law"[102], we can currently barely refer to any coherent field of law. It is a matter of fact, that in particular in the area of mutual recognition of administrative acts, the sources of EU law (in particular directives) had established certain level of regional standards. These rules do have an auxiliary function, which supports establishing and functioning of the "union of composite administration" under the umbrella of the EU.[103] So, when analysing this emerging field of EU law, one may argue, that very similar to the international administrative law existing in various jurisdictions,

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[99] Jaramillo, L., G., *From "constitutionalization" to "conventionalization" of legal order. The contribution of the ius constitutionale Commune*, "Revista Derecho del Estado", 2016, vol. 36, p. 166.

[100] See the Geneva Convention on Road Traffic of 1949, the Vienna Convention on Road Traffic of 1968 etc.

[101] See e.g. Linke, C., *Europäisches Internationales Verwaltungsrecht*, Peter Lang, Berlin, 2001, pp. 20-22.

[102] See Handrlica, J., *Is there an EU international administrative law? A juristic delusion revisited*, "European Journal of Legal Studies", 2020, vol. 12, issue 2, pp. 1-38.

[103] Ibid, pp. 36-38.

neither the "EU international administrative law" does represent a comprehensive field of substantive administrative law.

However, neither the EU law did reach a comprehensive harmonisation of international administrative law of the EU Member States. While particular issues have been harmonised by the EU directives, other issues remain to be governed exclusively by the municipal administrative law.

3. Conclusions

This article argues, that international administrative law constitutes a specific (sub)discipline of municipal administrative law. This (sub) discipline has both a cross-cutting and an auxiliary nature. It is comprised of norms, belonging to various field of substantive administrative law (tax law, social security law, traffic law, university law etc.) and consequently, it does not constitute a coherent field of substantive administrative law. The aim of these norms is to facilitate those international relations, where a certain foreign element appears. Therefore, international administrative law has been labelled also as a "delimiting law" in the scholarship of public law.

Fact is, that various dogmatical considerations regarding this particular field of administrative law emerged in legal scholarship. This article ranks these considerations into three areas:

Firstly, certain considerations were expressed concerning the subject and scope of international administrative law. While there has been a considerable line of scholarship, which has traditionally understood "international administrative law" as a part of international public law, this article is consequently following thesis developed by Karl Neumeyer, who ranked this field into the realms of municipal administrative law. This article ranks both the norms of substantive and procedural administrative law into the field of international administrative law. Also, this article argues, that in the dualistic systems, there is a number of norms addressing foreign elements in administrative law which are originating from international public law. If understanding the term "foreign element" in a broader way, also the administrative relations between authorities of various States fall under the field of international administrative law. However, the "backbone of international administrative law"[104] is established by the norms of municipal administrative law.

Secondly, there were dogmatic considerations concerning the nature of norms, constituting international administrative law. In the past, a certain line of scholarship has argued for a strict "unilaterality" of these norms, i.e. for impossibility of application of foreign administrative law by the domestic administrative authorities. However, such argumentation does not seem persuasive in the light of the recent public law. Consequently, this article argues, that the recent international administrative law is composed also by an emerging set of

[104] Schmidt-Aßmann, E., *The Internationalization of Administrative Relations as a Challenge for Administrative Law Scholarship,* "German Law Journal", 2008, vol., 9, p. 2076.

rules, requiring application of foreign law in specific situations.

Thirdly, this article argues, that while the backbone of international administrative law is established by the norms of municipal administrative law, one may argue for a gradual "internationalization" and "regionalization" of international administrative law. Fact is, that a number of instruments of international public law do recently provide for certain "internalisation" of rules in this area. However, this "internalisation" has only a fragmented nature and is far for any harmonisation. At the same time, certain level of regionalisation was achieved by the means of the EU law, what implies argumentation towards emergence of an "EU international administrative law". However, despite these developments at the supra-national level, international administrative law also today represents a legislative project, which is "national" in its nature. Representing an integral part of municipal administrative law, international administrative law in various jurisdictions is still directly linked to the national structures of administrative law. Consequently, the area discussed by this article still represents a "national project".

Finally, thus article argues that emergence of international administrative in various jurisdictions represents a feature of an (administrative) *ius commune*. The mere fact, a set of specific norms governing administrative relations with a foreign element emerged in various jurisdiction independently from any co-ordinated supra-national harmonisation efforts leads to argument, there is a specific *ius commune* in this field of law.

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