

## **Summary for Public Relations**

**Austrian Science Fund Project P 28732: Permissive Rules in Public International Law**

**Principal Investigator (PI): Univ.-Prof. Dr. Andreas Müller, LL.M. (Yale), Innsbruck**

The idea of permissive rules (“Erlaubnisnormen”), i.e. legal rules permitting certain actions, is all but self-evident. Law is typically portrayed as a system of rules controlling human behavior by (positively) ordering or (negatively) prohibiting certain actions. However, at closer observation it becomes manifest that permissive rules are commonly utilized in legal systems, including international law. Nonetheless, the “permissive rules” concept has hitherto not obtained the attention it deserves in international law scholarship.

The research project proceeds from the hypothesis that a distinction should be drawn between a “thin” (weak) and a “thick” (strong) concept of permissive rules. While the former refers to a situation of mere “non-prohibition”, the latter describes an actor’s actual entitlement or right to display a certain kind of conduct. This is not merely a conceptual difference, but has identifiable legal consequences. A permission in the sense of a non-prohibition, i.e. a thin/weak permissive rule, does not entail obligations for other actors on the international plane. In contrast, a thick/strong permissive rule, by virtue of bestowing entitlements and rights on one actor, creates corresponding duties for third actors.

In the first phase of the research project, the theoretical background of the permissive rules concept was examined based on Wesley N. Hohfeld’s scholarly works. In addition, the PI and his research team screened a sample of about 40 multilateral treaties in their authentic English and French language versions in order to find concrete examples of both thin and thick permissive rules. On this basis, the research team could identify the following areas as the most promising for further research: 1) self-determination and secession; 2) international humanitarian law, notably the killing of enemy combatants; 3) espionage; 4) air defense identification zones; 5) unfriendly acts and retorsion.

The research conducted in the framework of the project has confirmed the initial hypothesis that the permissive rules concept may serve as a useful instrument to conceptualize phenomena in international law that fall into “grey areas” and therefore resist to be easily classified into standard accounts of international law. The permissive rules concept has already been successfully applied to the field of self-determination and secession where the PI published an article in a renowned international law journal. In addition, the PI and a project staff member are co-authorizing a journal article addressing the phenomenon of espionage in a permissive rules perspective. In addition, the staff member in question works on a PhD project comprehensively examining the phenomena of unfriendly acts and retorsion, including in a permissive rules perspective. Furthermore, the research project was presented by the PI to, and discussed with, peers at the Universities of Frankfurt a.M. and Zürich as well as at the University of Michigan Law School.