Ursula Kriebaum, Restatements, in: Freiheit und Regulierung in der Cyberwelt – Rechtsidentifikation zwischen Quelle und Gericht, Berichte DGIR Bd. 47, Heidelberg 2016.

Summary

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I. What is a Restatement?

(1) The purpose of the restatements of the American Law Institute was to put the law into writing and to make it uniform and more systematic. They can serve as models for restatements in the field of International Law.

(2) There are national as well as international restatements of public international law. The two types of restatements are compiled by different types of institutions. Moreover, international restatements should build upon a consensus of the subjects of international law that their content indeed reflects current international law.

(3) The Restatement of the Law, Third, The Foreign Relations Law of the United States is an example for a national restatement. It reproduces public international law rules from a US perspective and national US rules with a bearing upon the foreign relations of the United States. Therefore, it is heavily influenced by US foreign policy and US state practice.

(4) A typical restatement is a non-binding, systematic presentation of existing customary international law or of the state practice or judicial practice on existing treaties or general principles of law.

II. Characteristics of a Restatement

(5) Restatements share four representative characteristics. These relate to:
- The institution that compiles the restatement.
- The purpose of the text.
- The procedure followed in drafting the text.
- The legal nature of the outcome.

(6) In the field of public international law, expert organs with worldwide representation are suitable for the preparation of a restatement.

(7) Restatements serve the purpose of putting existing rules into writing and to make them uniform and more systematic.

(8) Restatements are compiled through a scientific process of systematization with input from practitioners. They are not subject to political approval.

(9) Restatements are not binding but of authoritative character. This is the significant difference compared to a codification. The aim of a Restatement is to formulate rules that enjoy the rebuttable presumption of representing existing law. Whether a restatement will prevail depends on its reception by practice.

(10) Typically, a restatement first states the postulated rule. The commentary explains whether a rule is under dispute. Furthermore, the commentary references the sources that support the rule.

III. Does Public International Law need Restatements?

(11) Public International Law rests upon a combination of written and unwritten sources. Conflicting perspectives of the chief actors are typical and indeed inevitable.

Therefore, there is a need to put customary international law into writing and to standardize and systematize it.

(12) The need for standardization differs in various areas of public international law. Not least, this need depends on the existence of a centralized supervisory mechanism in the particular field of international law.

(13) In public international law, judgments and arbitral awards do not have the status of binding precedents. This makes standardization all the more important.

(14) Because of the ever-increasing number of judgments and other decisions in the various areas of international law, there is a need to process and systematize judicial practice. That task does not require a restatement but may be accomplished through a commentary. However, for purposes of standardization a Restatement is more suitable.

(15) Even in areas of public international law that are governed by treaties, Restatements can be useful if not all states are parties to the relevant treaties.

IV. Possible Restatement of Public International Law

(16) Restatements can be compiled by the ILC as well as by the ILA or the IDI. All three institutions have prepared restatements in the past. *Ad hoc* expert bodies can also be successful authors of restatements as is evidenced by examples from humanitarian law. However, all restatements have to pass the test of their acceptance in international practice.

V. Advantages and Disdavantages of Restatements

(17) Restatements occupy an intermediate position between treaty rules and the unwritten rules of customary international law.

(18) Compared to unwritten law, written legal rules enjoy the advantages of being more systematic, coordinated and easier to identify.

(19) Compared to treaties as a means of codification Restatements have several advantages:

- Political compromise, which often leads to a dilution of norms, is less prevalent in the context of Restatements.
- Restatements do not require formal approval by states through ratification or accession.
- Restatements do not permit reservations.

These three factors make it easier to produce a consistent text.

(20) Moreover, Restatements tend to freeze the law to a lesser degree than treaties keeping it more flexible.

VI. Concluding Remark

(21) Restatements offer advantages compared to customary international law as well as compared to codifications. They are a practicable method to put international law into writing and to make it uniform and more systematic. Furthermore, restatements facilitate access to the law.