

Teil I

# Allgemeines Völkerrecht

## § 1 Einführung in das Völkerrecht

### A. Über das Völkerrecht

**Vertiefende Literatur zu A.:** *P. Allott*, The Concept of International Law, EJIL 10 (1999), 31; *C. Amerasinghe*, International Law and the Concept of Law: Why International Law is Law, FS Skubiszewski, 1996, 79; *ders.*, Theory with Practical Effects: Is International Law neither Fish nor Fowl?, AVR 37 (1999), 1; *J. d'Aspremont*, International Law as a Belief System, 2018; *J. M. Beneyto/D. Kennedy* (Hg.), New Approaches to International Law, 2012; *P. S. Berman*, A Pluralist Approach to International Law, YaleJIL 32 (2007), 301; *S. Besson/J. Tasioulas* (Hg.), The Philosophy of International Law, 2010; *A. Buchanan/D. Golove*, Philosophy of International Law, in: Coleman/Shapiro (Hg.) The Oxford Handbook of Jurisprudence and Philosophy of Law, 2004, 868; *H. Bull*, The Anarchical Society: A Study of Order in World Politics, 3. Aufl. 2007; *D. Buss/A. Manji* (Hg.), International Law: Modern Feminist Approaches, 2005; *A. Carty*, Sociological Theories of International Law, MPEPIL (3/2008); *D. E. Childress* (Hg.), The Role of Ethics in International Law, 2012; *B. S. Chimni*, International Law and World Order, 2. Aufl. 2018; *J. Crawford*, Chance, Order, Change: The Course of International Law, RdC 365 (2013), 9; *T. Franck*, The Power of Legitimacy Among Nations, 1990; *M. García-Salmones Rovira*, The Project of Positivism in International Law, 2013; *D. Georgiev*, Politics or Rule of Law: Deconstruction and Legitimacy in International Law, EJIL 4 (1993), 1; *S. Hall*, The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism, EJIL 12 (2001), 269; *L. Henkin*, How Nations Behave, 1968; *J. Kammerhofer/J. d'Aspremont* (Hg.), International Legal Positivism in a Post-Modern World, 2014; *H. Kelsen*, Reine Rechtslehre, 2. Aufl. 1960; *H. Koh*, Why Do Nations Obey International Law?, YLJ 106 (1997), 2599; *M. Koskeniemi*, The Politics of International Law, EJIL 1 (1990), 4; *ders.*, From Apology to Utopia: The Structure of International Legal Argument, 2. Aufl. 2005; *S. Kouvo/Z. Pearson* (Hg.), Feminist Perspectives on Contemporary International Law, 2011; *H. E. Lee/S. Lee*, Positivism in International Law: State Sovereignty, Self-Determination and Alternative Perspectives, Asian YIL 16 (2010), 1; *R. McCorquodale*, Defining the International Rule of Law: Defying Gravity?, ICLQ 65 (2016), 277; *H. Mosler*, Völkerrecht als Rechtsordnung, ZaöRV 36 (1976), 6; *S. Oeter*, International Law and General Systems Theory, GYIL 44 (2001), 72; *A. Orakhelashvili*, Natural Law and Justice, MPEPIL (8/2007); *A. Orford* (Hg.), International Law and its Others, 2009; *N. Rajkovic/T. Aalberts/T. Gammeltoft-Hansen* (Hg.), The Power of Legality, 2016; *S. Ratner*, Legal Realism (Schol.), MPEPIL (7/2007); *ders.*, The Thin Justice of International Law, 2015; *M. N. S. Sellers* (Hg.), Parochialism, Cosmopolitanism, and the Foundations of International Law, 2012; *P. Singh/B. Mayer* (Hg.), Critical International Law, 2014; *B. Stark* (Hg.), International Law and Its Discontents, 2015; *R. Steinberg/J. Zasloff*, Power and International Law, AJIL 100 (2006), 64; *F. Tesón*, The Kantian Theory of International Law, ColumLR 92 (1992), 53; *ders.*, A Philosophy of International Law, 1998; *J. Weiler/A. Nissel* (Hg.), International Law: Critical Concepts in Law, 2011; *J. Wiegandt*, Internationale Rechtsordnung oder Machtordnung? Eine Anmerkung zum Verhältnis von Macht und Recht im Völkerrecht, ZaöRV 71 (2011), 31; *K. Zemanek*, Legal Foundations of the International System, RdC 266 (1997), 9.

## B. Entwicklungsstufen des Völkerrechts

**Vertiefende Literatur zu B.: Zu I. und II.** *C. Amerasinghe*, The Historical Development of International Law – Universal Aspects, AVR 39 (2001), 367; *A. Anghie*, Imperialism, Sovereignty and the Making of International Law, 2005; *A. v. Arnould* (Hg.), Völkerrechtsgeschichte(n): Historische Narrative und Konzepte im Wandel, 2016; *J. d’Aspremont*, The Critical Attitude and the History of International Law, 2019; *J. Barthélemy* u. a., Les fondateurs du droit international (1904), Neuausgabe 2014; *A. Becker Lorca*, Universal International Law: Nineteenth-century Histories of Imposition and Appropriation, HarvILJ 51 (2010), 475; *ders.*, *Mestizo International Law*, 2015; *T. Bröude/Y. Shany*, The Shifting Allocation of Authority in International Law, 2008; *G. Gozzi*, Rights and Civilizations: A History and Philosophy of International Law, 2019; *W. Grewe*, Vom europäischen zum universellen Völkerrecht, ZaöRV 42 (1982), 449; *ders.*, Epochen der Völkerrechtsgeschichte, 1984; *M. Koskenniemi*, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960, 5. Aufl. 2008; *S. Neff*, Justice among Nations: A History of International Law, 2014; *J. Reynolds*, Empire, Emergency and International Law, 2018; *H. Steiger*, Probleme der Völkerrechtsgeschichte, Staat 26 (1987), 103; *ders.*, Von der Staatengesellschaft zur Weltrepublik? 2009; *ders.*, Die Ordnung der Welt: Eine Völkerrechtsgeschichte des karolingischen Zeitalters (741 bis 840), 2010; *ders.*, Universalität und Partikularität des Völkerrechts in geschichtlicher Perspektive, 2015; *J. Verzijl*, International Law in Historical Perspective (12 Bände), Leyden 1968-1998; *K.-H. Ziegler*, Zur Geschichtlichkeit des Völkerrechts, Jura 1997, 449. MPEPIL, Beiträge zu: History of International Law: *W. Preiser*, Basic Questions and Principles (12/1984), *ders.*, Ancient Times to 1648 (12/1984), *S. Verosta*, 1648 to 1815 (12/1984), *H.-U. Scupin*, 1815 to World War I (12/1984), *M. Koskenniemi*, World War I to World War II (7/2007), *ders.*, Since World War II (7/2007).

**Zu III.** *M. Andenaes*, Reassertion and Transformation: From Fragmentation to Convergence in International Law, GeorgeJIL 46 (2015), 685; *ders./E. Bjorge* (Hg.), A Farewell to Fragmentation, 2015; *J. d’Aspremont/F. Dopagne*, Two Constitutionalisms in Europe: Pursuing an Articulation of the European and International Legal Orders, ZaöRV 68 (2008), 939; *A. Atilgan*, Global Constitutionalism: A Socio-legal Perspective, 2018; *M. Belov* (Hg.), Global Constitutionalism and Its Challenges to Westphalian Constitutional Law, 2018; *E. Benvenisti*, The Conception of International Law as Legal System, GYIL 50 (2007), 393; *ders.*, The Law of Global Governance, RdC 368 (2013), 47; *ders./G. Nolte* (Hg.), Community Interests Across International Law, 2018 *B.-O. Bryde*, Konstitutionalisierung des Völkerrechts und Internationalisierung des Verfassungsrechts, Staat 42 (2003), 61; *O. Diggelmann/T. Altwicker*, Is There Something Like a Constitution of International Law? ZaöRV 68 (2008), 623; *A. Fischer-Lescano/P. Liste*, Konstitutioneller Pluralismus der Weltgesellschaft, FS Bryde, 2013, 569; *L. Gordillo*, Interlocking Constitutions: Towards an Interordinal Theory of National, European and UN Law, 2012; *A. Halpin/V. Roeben* (Hg.), Theorising the Global Legal Order, 2009; *E. Jouannet*, What Is the Use of International Law? International Law as a 21st Century Guardian of Welfare, MichJIL 28 (2007), 815; *S. Kadelbach*, International Law – A Constitution for Mankind? GYIL 50 (2007), 303; *S. Kadelbach/T. Kleinlein*, Überstaatliches Verfassungsrecht: Zur Konstitutionalisierung im Völkerrecht, AVR 44 (2006), 235; *J. Klabbers/A. Peters/G. Ulfstein*, The Constitutionalization of International Law, 2011; *J. Klabbers/T. Piiparinen* (Hg.), Normative Pluralism and International Law: Exploring Global Governance, 2013; *T. Kleinlein*, Konstitutionalisierung im Völkerrecht: Konstruktion und Elemente einer idealistischen Völkerrechtslehre, 2012; *M. Knauff*, Konstitutionalisierung im inner- und überstaatlichen Recht – Konvergenz oder Divergenz?, ZaöRV 68 (2008), 453; *M. Koskenniemi*, Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization, TIL 8 (2007), 9; *D. Kühne*, Materielle Konstitutionalisierung im Völkerrecht: Zum Entstehen einer internationalen Verfassungsordnung, 2014; *M. Kumm*, The Cosmopolitan Turn in Constitutionalism,

IJGLS 20 (2013), 605; *I. Ley*, Kant versus Locke: Europarechtlicher und völkerrechtlicher Konstitutionalismus im Vergleich, *ZaöRV* 69 (2009), 317; *A. Mills*, The Private History of International Law, *ICLQ* 55 (2006), 1; *H. Mosler*, The International Society as a Legal Community, 1980; *M. Nettesheim*, Das kommunitäre Völkerrecht, *JZ* 2002, 569; *M. Neves*, Transconstitutionalism, 2013; *Y. Onuma*, International Law in a Transcivilizational World, 2017; *A. Paulus*, Die internationale Gemeinschaft im Völkerrecht, 2001; *M. Payandeh*, Internationales Gemeinschaftsrecht, 2010; *A. Peters*, Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures, *LJIL* 19 (2006), 579; *dies.*, Merits of Global Constitutionalism, *IJGLS* 16 (2009), 397; *M. Probst*, The Concept of Unity in Public International Law, 2012; *D. Pulkowski*, The Law and Politics of International Regime Conflict, 2014; *C. Schwöbel*, Organic Global Constitutionalism, *LJIL* 23 (2010), 529; *S. Seebach*, Staaten als de-facto-Verfassungsgeber im konstitutionalisierten Völkerrecht?, *ARSP* 105 (2019), 233; *B. Simma*, From Bilateralism to Community Interest in International Law, *RdC* 250 (1995), 225; *B. Simma/A. Paulus*, The “International Community”: Facing the Challenge of Globalization, *EJIL* 9 (1998), 266; *A.-M. Slaughter*, A New World Order, 2004; *C. Tomuschat*, Die internationale Gemeinschaft, *AVR* 33 (1995), 1; *S. Villalpando*, The Legal Dimension of the International Community: How Community Interests Are Protected in International Law, *EJIL* 21 (2010), 387; *C. Walter*, Constitutionalizing (Inter)national Governance: Possibilities for and Limits to the Development of an International Constitutional Law, *GYIL* 44 (2001), 170; *P. Webb*, International Judicial Integration and Fragmentation, 2016; *E. de Wet*, The International Constitutional Order, *ICLQ* 55 (2006), 51; *dies.*, The Emergence of International and Regional Value Systems as a Manifestation of the Emerging International Constitutional Order, *LJIL* 19 (2006), 611; *S. Wheatley*, The Democratic Legitimacy of International Law, 2010; *M. Young* (Hg.), *Regime Interaction in International Law: Facing Fragmentation*, 2015.

## C. Charakteristika des Völkerrechts

**Vertiefende Literatur zu C.:** *D. Armstrong/T. Farrell/H. Lambert*, International Law and International Relations, 2. Aufl. 2012; *M. Byers* (Hg.), The Role of Law in International Politics, 2001; *J. Delbrick*, Structural Changes in the International System and its Legal Order, *SZIER* 11 (2001), 1; *J. Dunoff/M. Pollack* (Hg.), Interdisciplinary Perspectives on International Law and International Relations, 2012; *G. Fiti Sinclair*, State Formation, Liberal Reform and the Growth of International Organizations, *EJIL* 26 (2015), 445; *L. Henkin*, International Law: Politics and Values, 1995; *F. Hoffmeister/T. Kleinlein*, International Public Order, *MPEPIL* (11/2013); *P. Kunig*, Völkerrecht als öffentliches Recht – Ein Glasperlenspiel, *GS Grabitz*, 1995, 325; *T. Marauhn* (Hg.), Recht, Politik und Rechtspolitik in den internationalen Beziehungen, 2005; *A.-M. Slaughter*, International Law and International Relations, *RdC* 285 (2000), 9; *D. Thürer*, Modernes Völkerrecht: Ein System im Wandel und Wachstum – Gerechtigkeitsgedanke als Kraft der Veränderung?, *ZaöRV* 60 (2000) 557; *J. Varwick*, Völkerrecht und Internationale Politik – ein ambivalentes Verhältnis, *Politische Bildung* 2005, 63; *O. Yasuaki*, International Law in and with International Politics, *EJIL* 14 (2003), 105.

## D. Entwicklungsperspektiven

**Vertiefende Literatur zu D.:** *C. Bailliet*, Non-State Actors, Soft Law and Protective Regimes, 2012; *E. Benvenisti*, Coalitions of the Willing and the Evolution of Informal International Law, in: *Callies/Nolte/Stoll* (Hg.), *Coalitions of the Willing*, 2007, 1; *P. S. Berman*, Global Legal Pluralism, 2012; *A. v. Bogdandy*, Demokratie, Globalisierung, Zukunft des Völkerrechts – eine Bestandsaufnahme, *ZaöRV* 63 (2003), 853; *R. Brownsword* (Hg.), *Global Governance*

and the Quest for Justice IV: Human Rights, 2005; *B. S. Chimni*, The Past, Present and Future of International Law: A Critical Third World Approach, *MelbJIL* 8 (2007), 499; *R. Domingo*, The Crisis of International Law, *VJTL* 42 (2009), 1543; *J. Dugard*, The Future of International Law, *LJIL* 20 (2007), 729; Heinrich-Böll-Stiftung (Hg.), *Die Zukunft des Völkerrechts in einer globalisierten Welt*, 2006; *S. Hobe*, *Die Zukunft des Völkerrechts im Zeitalter der Globalisierung*, *AVR* 37 (1999), 253; *J. L. Kaul/A. Jha* (Hg.), *Shifting Horizons of Public International Law: A South Asian Perspective*, 2018; *H. Krieger/G. Nolte/A. Zimmermann* (Hg.), *The International Rule of Law: Rise or Decline?*, 2019; *S. Laghmani*, *Droit international et diversité culturelle*, *RGDIP* 112 (2008), 241; *C. Leben*, *The Advancement of International Law*, 2010; *D. Lewis* (Hg.), *Global Governance and the Quest for Justice I: International and Regional Organisations*, 2006; *S. MacLeod* (Hg.), *Global Governance and the Quest for Justice II: Corporate Governance*, 2006; *P. Odell/C. Willett* (Hg.), *Global Governance and the Quest for Justice III: Civil Society*, 2008; *Y. Onuma*, *A Transcivilizational Perspective on International Law: Questioning prevalent cognitive frameworks in the emerging multi-polar and multi-civilizational world of the Twenty-First Century*, *RdC* 342 (2009), 77; *A. Rodiles*, *Coalitions of the Willing and International Law*, 2018; *C. Thies*, *Kulturelle Vielfalt als Legitimitätselement der internationalen Gemeinschaft*, 2013; *J. Trachtman*, *The Future of International Law*, 2013; *Z. U. Türem*, *Rising Authoritarianism(s) and the Globalization of Law: An Initial Exploration*, *IJGLS* 26 (2019), 1; *B. Vogel/R. Dolzer/M. Herdegen* (Hg.), *Die Zukunft der UNO und des Völkerrechts*, 2004; *P. Zumbansen*, *Die vergangene Zukunft des Völkerrechts*, *KJ* 34 (2001), 46.