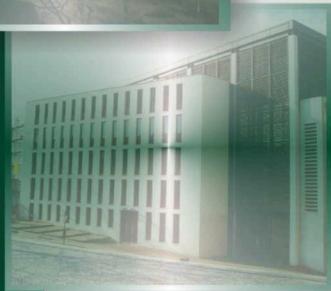




Martin-Luther-Universität
Halle-Wittenberg



Beiträge zum Transnationalen Wirtschaftsrecht

Herausgegeben von:
Prof. Dr. Christian Tietje
Prof. Dr. Gerhard Kraft
Prof. Dr. Rolf Sethe

Karsten Nowrot
Global Governance
and International Law

November 2004

Heft 33

Global Governance and International Law

By

Karsten Nowrot

Institut für Wirtschaftsrecht
Forschungsstelle für Transnationales Wirtschaftsrecht
Juristische Fakultät der Martin-Luther-Universität Halle-Wittenberg

Karsten Nowrot, LL.M. (Indiana) is lecturer and research assistant at the Transnational Economic Law Research Center (Director: Prof. Dr. Christian Tietje, LL.M.) at the Faculty of Law of the Martin-Luther-University Halle-Wittenberg, Germany.

The paper is based on a presentation given by the author at the 7th International Human Rights Conference "An Asia-Europe Dialogue on Human Rights and International Law – The International Criminal Court: A New Era for Justice?" organized by the Friedrich-Ebert-Foundation in Manila/Philippines on 11-12 October 2004.

Christian Tietje/Gerhard Kraft/Rolf Sethe (Hrsg.), Beiträge zum Transnationalen Wirtschaftsrecht, Heft 33

Bibliografische Information der Deutschen Bibliothek

Die Deutsche Bibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet unter <http://www.dnb.ddb.de> abrufbar.

ISSN 1612-1368

ISBN 3-86010-750-X

Nominal Charge Euro 5

The papers in the series „Beiträge zum Transnationalen Wirtschaftsrecht“ are available on the internet at:

www.wirtschaftsrecht.uni-halle.de
www.telc.uni-halle.de

Institut für Wirtschaftsrecht
Forschungsstelle für Transnationales Wirtschaftsrecht
Juristische Fakultät
Martin-Luther-Universität Halle-Wittenberg
Universitätsplatz 5
D-06099 Halle (Saale)
Tel.: 0345-55-23149 / -55-23180
Fax: 0345-55-27201
E-Mail: ecohal@jura.uni-halle.de

TABLE OF CONTENTS

A. Introduction	5
B. The Main Characteristics of Global Governance.....	5
I. Increasing Diversity of Law-Making Processes	6
II. Growing Variety of Law-Enforcement Processes.....	8
III. Important Role of Non-State and Sub-State Actors	10
C. Reasons for the Emergence of Global Governance	12
D. The Interrelationship between Global Governance and International Law.....	14
I. The Significance of International Law in Global Governance.....	14
II. The Impact of Global Governance on the Structure of the International Legal Order.....	16
1. Sources of International Law.....	16
2. Prerequisites for Legal Personality under International Law	17
3. State Sovereignty	19
E. Conclusion.....	20
References	21

A. Introduction

“Global Governance and International Law” appears not only at first sight to be far too broad a topic in order to be discussed in a rather short contribution. Indeed, taking into account the complexity of this issue, it hardly needs to be emphasized that it will not be possible to elaborate on all its manifold implications in a comprehensive way. Therefore, this paper confines itself to give some general ideas on the structural changes currently visible in the international system and its legal order – ideas, that are intended to contribute to the ongoing discussion on the transformation of international law taking place under the impact of global governance at the beginning of 21st century.

For this purpose, the paper has been divided into three parts. Part I deals with the question of what is meant by global governance, which phenomena do this term describe and what are their main characteristics. Part II provides an outline of what are considered to be the main underlying reasons of the emerging regulatory scheme of global governance. Finally, in Part III, some aspects of the interrelationship between global governance and international law are evaluated, namely the significance of international law in global governance as well as the impact that global governance has on the structure of the international legal order.

B. The Main Characteristics of Global Governance

Despite the ever-growing literature on global governance since the beginning of the 1990th,¹ the as of today probably still most influential description of this concept has been given by the *Commission on Global Governance*² – founded at the initiative of the former German chancellor *Willy Brandt*³ – in its concluding report bearing the title “Our Global Neighbourhood” in 1995. According to this report, global governance has to be understood as:

“[...] the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest. [...] At the global level, governance has been viewed primarily as intergovernmental relationships, but it must now be understood as also involving non-governmental organizations (NGOs), citizens’ movements, multinational corporations and the

¹ See, e.g., the overview given by *Koenig-Archibugi*, in: Held/McGrew (eds.), *Governing Globalization*, 46 *et seq.*; *Mürle*, *Global Governance*, 3 *et seq.*, with further references.

² On the importance of the *Commission on Global Governance*’s findings for the subsequent research on this subject see only *Tietje*, *Internationalisiertes Verwaltungshandeln*, 164.

³ *Mürle*, *Global Governance*, 8; *Messner/Nuscheler*, in: Senghaas (ed.), *Frieden machen*, 337 (340).

global capital market. [...] There is no single model or form of global governance, nor is there a single structure or set of structures. It is a broad, dynamic, complex process of interactive decision-making that is constantly evolving and responding to changing circumstances.”⁴

In the light of this definition, which – considering the complex phenomenon it tries to describe – necessarily has to be a rather abstract one, it is possible to identify three main characteristics of the regulatory system of global governance, all of them being interrelated with each other.

I. Increasing Diversity of Law-Making Processes

First, a predominant feature of global governance is the increasing diversity of interconnected law-making processes – or, it is probably more precise to speak of normatively relevant regulatory processes because not all of these instruments are legally binding in a traditional sense. While in the past, legal regulations were – more or less⁵ – neatly divided between domestic law, created by states, and public international law, also arising from the regulatory activities of states, global governance has resulted in what has been called “an emerging legal pluralism beyond the state level”⁶ as well as – albeit still controversial as for example demonstrated by a recent decision of the Federal German Constitutional Court of 14 October 2004⁷ – the development of a system of a functional unity between international law and domestic law.⁸ In addition, the former distinction between so-called “hard law” and non-binding regulatory instruments is increasingly blurred.⁹ To mention only a few randomly chosen examples: International judicial bodies like the International Court of Justice¹⁰ and the Appellate

⁴ *Commission on Global Governance, Our Global Neighbourhood, 2 et seq.*

⁵ See, however, with regard to the importance of non-binding rules of behaviour in the international system already in previous centuries *Delbrück*, in: Nerlich/Rendtorff (eds.), *Nukleare Abschreckung*, 353 (358 *et seq.*); *Tietje*, *Zeitschrift für Rechtssoziologie* 24 (2003), 27 (31 *et seq.*).

⁶ *Delbrück*, *Indiana Journal of Global Legal Studies* 9 (2002), 401 (422).

⁷ See BVerfG, 2 BvR 1481/04 of 14 October 2004, para. 34, emphasizing that the relationship between international law and domestic law is characterized by the existence of two separate legal systems. The decision is available in German on the Internet under: <www.bverfg.de/entscheidungen/rs20041014_2bvr148104.html> (visited on 19 October 2004); an English summary of the decision is provided in the Court’s press release No. 92/2004 available on the Internet under: <<http://www.bundesverfassungsgericht.de/cgi-bin/link.pl?presse>> (visited on 19 October 2004).

⁸ On the idea of a functional unity between international and domestic law resulting from the emergence of global governance but to be distinguished from the classical monist theory see *Tietje*, *Internationalisiertes Verwaltungshandeln*, 640 *et seq.*; *Thürer*, *SZIER* 9 (1999), 217 *et seq.*; *Allott*, *Health of Nations*, 315.

⁹ See *Shelton*, in: Evans (ed.), *International Law*, 145 (168) (“The reality seems to be a dynamic interplay between soft and hard obligations”); *Koh*, *Yale Law Journal* 106 (1997), 2599 (2630 *et seq.*) (“International law now comprises of a complex blend of customary, positive, declarative, and ‘soft’ law, which seeks not simply to ratify existing practice, but to elevate it.”); for a related position see also *Dahm/Delbrück/Wolfrum*, *Völkerrecht*, Vol. I/3, 517; *Tietje*, *ZVglRWiss* 101 (2002), 404 (417); *Verdross/Simma*, *Völkerrecht*, § 657; *Graf Vitzthum*, in: Graf Vitzthum (ed.), *Völkerrecht*, 1 (13). A more comprehensive analysis of this phenomenon is provided, e.g., by *Abbott/Snidal*, *International Organization* 54 (2000), 421 *et seq.*

¹⁰ See, e.g., ICJ, *Case Concerning the Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), ICJ Reports 1997, 7 (71 *et seq.*); *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion), ICJ

Body of the World Trade Organization,¹¹ in establishing the law to be applied by them, are currently taking frequent recourse to international declarations, commonly referred to as “soft law”, especially the ones adopted at the so-called “world order conferences” such as the 1992 Rio Conference on Environment and Development.¹² Non-binding “codes of conduct” like the ones adopted by international organizations such as the “OECD Guidelines for Multinational Enterprises”,¹³ the International Labour Organization’s “Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy”¹⁴ or the “International Code of Marketing of Breast-milk Substitutes” of the World Health Organization¹⁵ as well as the respective codes adopted by individual corporations, sometimes intentionally being made subject to monitoring by NGOs,¹⁶ exercise considerable regulatory force.¹⁷

Furthermore, international standards developed by private or intermediate organizations like the International Accounting Standards Board, the Codex Alimentarius Commission of the Food and Agriculture Organization and the World Health Organization, the International Organisation for Standardisation, and the Basle Committee on Banking Supervision¹⁸ either acquire a certain amount of legally binding

Reports 1996, 266, paras. 70 *et seq.*; and recently *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion), ICJ Reports 2004, paras. 87 *et seq.*

¹¹ See only WTO, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Appellate Body of 12 October 1998, WT/DS58/AB/R, para. 168; *United States – Import Prohibition of Certain Shrimp and Shrimp Products, Recourse to Article 21.5 of the DSU by Malaysia*, Report of the Appellate Body of 22 October 2001, WT/DS58/AB/RW, para. 124.

¹² For a more detailed evaluation of this development see, e.g., *Charney*, *American Journal of International Law* 87 (1993), 529 (543 *et seq.*); *Charney*, in: Delbrück (ed.), *New Trends in International Lawmaking*, 171 (174 *et seq.*); *Mendelson*, *RdC* 272 (1998), 155 (378 *et seq.*); *Fidler*, *German Yearbook of International Law* 39 (1996), 198 (217 *et seq.*); *Francioni*, in: Lowe/Fitzmaurice (eds.), *Essays in Honour of Jennings*, 167 (168 *et seq.*); on the notion of “world order conferences” see also *Tomuschat*, in: Makarczyk (ed.), *Essays in Honour of Skubiszewski*, 563 *et seq.*

¹³ The most recent version is reprinted in: *I.L.M.* 40 (2001), 237; see thereto *Tully*, *ICLQ* 50 (2001), 394 *et seq.*; *Karl*, in: Addo (ed.), *Human Rights Standards*, 89 *et seq.*; *Klingenberg*, *ZVglRWiss* 101 (2002), 421 *et seq.*

¹⁴ The most recent version is reprinted in: *I.L.M.* 41 (2002), 186; see also *Wallace*, *Multinational Enterprise*, 1080 *et seq.*; *Muchlinski*, *Multinational Enterprises*, 457 *et seq.*

¹⁵ Reprinted in: *World Health Organization*, *International Code*, 6 *et seq.*; for an evaluation of this code of conduct see *Sikkink*, *International Organization* 40 (1986), 815 *et seq.*; *Richter*, *Holding Corporations Accountable*, 60 *et seq.*

¹⁶ A number of these voluntary codes of conduct are reprinted in: *Blanpain* (ed.), *Multinational Challenges*, 343 *et seq.*; see thereto *Mayne*, in: Picciotto/Mayne (eds.), *Regulating International Business*, 235 *et seq.*; *Thürer*, *ZaöRV* 60 (2000), 557 (588); *Wolff/Takel/Brozus*, in: Albert *et al.* (eds.), *Entgrenzung der Politik*, 140 (154 *et seq.*); *Webley*, in: Addo (ed.), *Human Rights Standards*, 107 *et seq.*; *Campins-Eritjal/Gupta*, *Non-State Actors and International Law* 2 (2002), 213 (220 *et seq.*); *Nowrot/Wardin*, *Liberalisierung der Wasserversorgung*, 57.

¹⁷ On the various legal effects of these codes of conduct see, e.g., *Baade*, in: Horn (ed.), *Legal Problems*, 3 *et seq.*; *Sanders*, in: Fouchard/Kahn/Lyon-Caen (eds.), *Études offertes à Goldman*, 281 (289 *et seq.*); *Kinley/Tadaki*, *Virginia Journal of International Law* 44 (2004), 931 (952 *et seq.*); *Vogelaar*, *Netherlands International Law Review* 27 (1980), 69 (76 *et seq.*); *Vagts*, *Common Market Law Review* 18 (1981), 463 (470 *et seq.*); *Duruigbo*, *Multinational Corporations*, 121 *et seq.*; *van Genugten/van Bijsterveld*, *Tilbrug Foreign Law Review* 7 (1998), 161 (170 *et seq.*).

¹⁸ On these as well as various other private and intermediate standardization organizations and the impact of their activities see only *Braithwaite/Drahos*, *Global Business Regulation, passim*; *Cable*, *Globalization*, 63 *et seq.*; *Smith*, in: Dauvergne (ed.), *Jurisprudence*, 93 *et seq.*; *Zaring*, *Texas International Law Journal* 33 (1998), 281 *et seq.*; *Teixeira*, in: Ladeur (ed.), *Public Governance*, 305

force through their incorporation in international treaty regimes such as the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures of the WTO legal order,¹⁹ or, even if they are not directly legally binding, they are nevertheless universally adhered to by the relevant actors and thus not devoid of normative value.²⁰

Finally, autonomous self-regulatory systems have evolved without any or only a negligible participation of states like the so-called “new *lex mercatoria*” for business transactions with the important role played by the International Chamber of Commerce,²¹ the *lex informatica* or *lex electronica* influenced, *inter alia*, by the Internet Corporation for Assigned Names and Numbers (ICANN),²² or the *lex sportiva internationalis*, prominently being represented by the International Olympic Committee.²³

II. Growing Variety of Law-Enforcement Processes

Secondly, global governance is also characterized by changes in and a growing variety of the law-enforcement processes in the international system. Traditionally, international law had been primarily enforced by confrontational means, in a decentralized way by individual states or groups of states.²⁴ To the contrary, one can currently identify at least four alternative trends with regard to international law enforcement: First, international treaty regimes, but also other regulatory instruments show an increasing reliance on non-confrontational, cooperative enforcement mechanisms considered to be more conducive in promoting compliance with international legal obligations.²⁵ Among these mechanisms is the approach of seeking compliance by provid-

(311 *et seq.*); Vesting, in: *ibid.*, 247 *et seq.*; Roht-Arriaza, in: Shelton (ed.), Commitment and Compliance, 263 *et seq.*

¹⁹ See thereto only Tietje/Nowrot, European Business Organization Law Review 5 (2004), 321 (343 *et seq.*), with further references.

²⁰ Tietje/Nowrot, European Business Organization Law Review 5 (2004), 321 (343).

²¹ From the numerous literature on this issue see, e.g., Cutler, Private Power, 180 *et seq.*; De Ly, in: Appelbaum *et al.* (eds.), Rules and Networks, 159 *et seq.*; for an evaluation of this perception see also Oeter, German Yearbook of International Law 44 (2001), 72 *et seq.*

²² On the regulatory processes with regard to the Internet see only Mefford, Indiana Journal of Global Legal Studies 5 (1997), 211 *et seq.*; Tietje, in: Hans-Bredow-Institut (ed.), Internationales Handbuch, 15 (19 *et seq.*); Teubner, ZaöRV 63 (2003), 1 (16 *et seq.*); Röben, German Yearbook of International Law 42 (1999), 400 *et seq.*

²³ On the term *lex sportiva internationalis* see Teubner, in: Teubner (ed.), Global Law, 3 (4); for a more detailed analysis of the role of the International Olympic Committee see Hobe, Indiana Journal of Global Legal Studies 5 (1997), 191 (196 *et seq.*); Vedder, German Yearbook of International Law 27 (1984), 233 *et seq.*; Lehmkuhl, in: Zangl/Zürn (eds.), Verrechtlichung, 179 *et seq.*; Nowrot, Indiana Journal of Global Legal Studies 6 (1999), 579 (598 *et seq.*).

²⁴ See only Tietje, Internationalisiertes Verwaltungshandeln, 265 *et seq.*; Stein, in: Delbrück (ed.), Law Enforcement Authority, 107 (126); Nowrot/Schabacker, American University International Law Review 14 (1998), 321 (401).

²⁵ For a more detailed analysis of this phenomenon see, e.g., Chayes/Handler Chayes, The New Sovereignty, 109 *et seq.*; Tietje, Internationalisiertes Verwaltungshandeln, 264 *et seq.*; Delbrück, Indiana Journal of Global Legal Studies 9 (2002), 401 (425 *et seq.*); Neuhold, German Yearbook of International Law 42 (1999), 84 *et seq.*; Rosenau, in: Held/McGrew (eds.), Governing Globalization, 70 (74 *et seq.*); van Dijk, German Yearbook of International Law 30 (1987), 9 (26 *et seq.*); as well as the contributions by Alvarez, Downs, and Kingsbury in: Michigan Journal of International Law 19 (1998), 303 *et seq.*, 319 *et seq.*, 345 *et seq.*, each with further references.

ing incentives to adhere to international norms – a prominent example is the *Global Compact* initiated by the United Nations Secretary General *Kofi Annan*.²⁶ Other cooperative compliance mechanisms are, *inter alia*, notification and reporting requirements, monitoring systems, capacity building and technical assistance which can be found in various areas of international law such as international human rights law,²⁷ international environmental law,²⁸ and international economic law.²⁹ With regard to an example of these new enforcement structures one only needs to consider the various so-called “flexible mechanisms” included in the Kyoto Protocol³⁰ to the United Nations Framework Convention on Climate Change³¹ which mirror nearly all of these just mentioned compliance mechanisms.³²

Furthermore, the evolving private and intermediate self-regulatory mechanisms do increasingly no longer rely on states for securing compliance but develop their own judicial and non-judicial enforcement mechanisms. Aside from the well-established practice with regard to private and mixed business transactions that by now for example in the field of investment protection show a growing shift from *ad hoc* tribunals to the establishment of more institutionalized investor-state arbitration proceedings,³³ other notable examples are the various private and intermediate mechanisms for the resolution of domain-name-disputes.³⁴

Thirdly, a tendency has evolved to enforce international law by invoking respective violations in civil and administrative law cases before domestic courts. This “transnational human rights litigation”³⁵ has been especially tried in the United States with regard to foreign individuals such as the former leader of the Bosnian Serbs *Karadzic*³⁶ as well as a number of transnational enterprises based on the by now well-

²⁶ Further information on the *Global Compact* is available on the Internet under: <www.unglobalcompact.org/Portal/> (visited on 16 October 2004); see also for example *Kell/Levin*, *Business and Society Review* 108 (2003), 151 *et seq.*; *Ruggie*, *Journal of Corporate Citizenship* 2 (No. 5, 2002), 27 *et seq.*; *Rieth*, in: Schirm (ed.), *New Rules*, 177 *et seq.*; *Rieth*, *Die Friedens-Warte* 79 (2004), 151 *et seq.*; *Nowrot*, *Die UN-Norms*, 22 *et seq.*, with further references.

²⁷ With regard to alternative compliance mechanisms in international human rights law see only *Tomuschat*, *Human Rights*, 112 *et seq.*; *Delbrück*, in: *Delbrück et al.* (eds.), *Juristen-Kolloquium*, 31 (32 *et seq.*).

²⁸ See thereto *Wolftrum*, *RdC* 272 (1998), 9 *et seq.*; *Lang*, *ZaöRV* 56 (1996), 685 *et seq.*; *Marauhn*, *ZaöRV* 56 (1996), 696 *et seq.*; *Reeve*, *Policing International Trade*, 16 *et seq.*

²⁹ For a more comprehensive analysis see *Tietje*, *Normative Grundstrukturen*, 135 *et seq.*; *Benedek*, *Rechtsordnung des GATT*, 238 *et seq.*, 299 *et seq.*

³⁰ Reprinted in: *I.L.M.* 37 (1998), 22.

³¹ Reprinted in: *I.L.M.* 31 (1992), 851.

³² On these „flexible mechanisms“ see, e.g., *Nowrot*, *German Yearbook of International Law* 44 (2001), 396 (410 *et seq.*); *Conaty*, *Asia Pacific Journal of Environmental Law* 3 (1998), 363 *et seq.*

³³ See *Legum*, *Arbitration International* 19 (2003), 143 *et seq.*; *Tietje*, *Grundstrukturen*, 8 *et seq.*; *Weil*, in: *Schlemmer-Schulte/Tung* (eds.), *Liber Amicorum Shihata*, 839 (849 *et seq.*); *Hornachi*, *Journal du Droit International* 131 (2004), 367 (399 *et seq.*); *Nowrot*, in: *Bungenberg/Meessen* (eds.), *Internationales Wirtschaftsrecht*, 49 (58 *et seq.*); *Toope*, *Mixed International Arbitration*, 6.

³⁴ Thereto only *Smith*, *RdC* 288 (2000), 229 (292 *et seq.*); *von Bernstorff*, in: *Joerges et al.* (eds.), *Transnational Governance*, 257 (270 *et seq.*); *Strömer*, *K & R* 2000, 587 *et seq.*; *Nowrot*, *Internet-Domains*, 6 *et seq.*

³⁵ On this expression see *Joseph*, *Transnational Human Rights Litigation*, *passim*.

³⁶ See thereto, e.g., *Kunstle*, *Duke Journal of Comparative and International Law* 6 (1996), 319 *et seq.*; *Johnson*, *German Yearbook of International Law* 39 (1996), 434 *et seq.*, with further references.

known *Alien Tort Claims Act*.³⁷ While these just mentioned cases in the United States primarily deal with the possible civil law consequences of violations of human rights and international criminal law, the Supreme Court of the Philippines has already in 1993 handed down a “far-reaching decision”³⁸ with regard to international environmental law in the case *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources* being concerned with a claim for the termination of timber license agreements granted to private companies.³⁹ The Court ruled that the plaintiff minors have standing to invoke for themselves as well as for their unborn posterity, for future generations, the right to a healthy environment based on the concept of “inter-generational responsibility” under Philippine constitutional law, but also, as invoked by the plaintiffs, under international law.

Last but not least, there are clear indications that “the idea of an institutionalized judiciary as an instrument of international law enforcement has gained momentum”.⁴⁰ In recent years, one can not only observe an increasing use by states and the United Nations General Assembly of the “old” International Court of Justice in light of which the Court has on 30 July 2004 decided to take further measures for increasing its productivity.⁴¹ Rather, what is even more notable is the establishment of various new international judicial bodies such as the International Criminal Court, the International Tribunal on the Law of the Sea, the Dispute Settlement Body of the WTO, the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and the Special Court for Sierra Leone, leaving aside similar developments at the regional level in the areas of human rights as well as economic integration.⁴²

III. Important Role of Non-State and Sub-State Actors

In addition to this growing diversity of interconnected law-making and law-enforcement processes, a third central feature of global governance is the important role played by non-state as well as sub-state actors in the development and enforce-

³⁷ From the by now voluminous literature on this issue see only *Hufbauer/Mitrokostas*, *Journal of International Economic Law* 7 (2004), 245 *et seq.*; *Koh*, *Journal of International Economic Law* 7 (2004), 263 *et seq.*; *Hall*, *George Washington International Law Review* 34 (2002), 401 (406 *et seq.*); *Nowrot*, *Die Friedens-Warte* 79 (2004), 119 (132 *et seq.*); as well as the various contributions in *Kamminga/Zia-Zarifi* (eds.), *Liability of Multinational Corporations under International Law*, 2000, each with further references.

³⁸ *Riedel*, in: *Delbrück* (ed.), *New Trends in International Lawmaking*, 61 (73); for a similar assessment of this case see *Fitzmaurice*, *Southern Illinois University Law Journal* 23 (1999), 611 (618 *et seq.*); *Allen*, *Georgetown International Environmental Law Review* 6 (1994), 713 (741).

³⁹ The decision of the Supreme Court of the Philippines of 30 July 1993 is reprinted in: *I.L.M.* 33 (1994), 173.

⁴⁰ *Delbrück*, *Indiana Journal of Global Legal Studies* 9 (2002), 401 (424).

⁴¹ International Court of Justice Press Release 2004/30 of 30 July 2004, available on the Internet under: <www.icj-cij.org/icjwww/ipresscom/ipress2004/ipresscom2004-30_20040730.htm> (visited on 16 October 2004).

⁴² With regard to this continued proliferation of international judicial institutions see only *Oellers-Frahm*, *Max Planck Yearbook of United Nations Law* 5 (2001), 67 *et seq.*; *Tietje*, *DVBl.* 118 (2003), 1081 (1091).

ment of these regulatory instruments.⁴³ Not only do international governmental organizations create among each other an increasingly dense network of formal and informal agreements⁴⁴ – one of the most recent examples being the Agreement between the United Nations and the International Criminal Court signed on 4 October 2004.⁴⁵ Rather, also virtually countless examples exist of non-state actors like NGOs and transnational enterprises being involved in the law-making as well as law-enforcement processes. NGOs were incorporated in the preparation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, the Convention on the Rights of the Child, the Convention to Combat Desertification, the Convention on International Trade in Endangered Species, and the establishment of the International Criminal Court.⁴⁶ Transnational Enterprises played a key role, *inter alia*, in the adoption of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).⁴⁷ Finally, the preparations of the “Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights”⁴⁸ by a *Sessional Working Group on the Working Methods and Activities of Transnational Corporations* of the UN *Sub-Commission on the Promotion and Protection of Human Rights*, a process recently being interrupted or at least slowed down by the UN *Commission on Human Rights*,⁴⁹ had so far also manifest a concerted effort of states and international organiza-

⁴³ Generally on the increasingly influential role of especially non-state but also sub-state actors as an important feature of global governance see only *Woods*, in: Held/McGrew (eds.), *Governing Globalization*, 25 (26 *et seq.*); *Tietje*, *Internationalisiertes Verwaltungshandeln*, 167; *Ruffert*, *Globalisierung als Herausforderung*, 29 *et seq.*; *Schuppert*, *Staatswissenschaft*, 870 *et seq.*; *Reinisch*, *German Yearbook of International Law* 44 (2001), 270 (272 *et seq.*).

⁴⁴ Generally on these agreements see only *Schermers/Blokker*, *International Institutional Law*, §§ 1691 *et seq.*; specifically with regard to the function of this form of international institutional cooperation in the context of global governance see also *Tietje*, *Journal of World Trade* 36 (2002), 501 *et seq.*, with further references.

⁴⁵ Further information as well as the text of the agreement is available on the Internet under: <www.icc-cpi.int/newspoint/pressreleases/47.html> (visited on 16 October 2004).

⁴⁶ See thereto as well as for other examples of the participation of NGOs in international law-making and law-enforcement processes, e.g., *Raustiala*, *Harvard Environmental Law Review* 21 (1997), 537 *et seq.*; *Slaughter*, *RdC* 285 (2000), 9 (96 *et seq.*); *Suy*, in: Kreijen (ed.), *International Governance*, 373 (374 *et seq.*); *Riedinger*, *Rolle nichtstaatlicher Organisationen*, 161 *et seq.*; *Nowrot*, *Indiana Journal of Global Legal Studies* 6 (1999), 579 (591 *et seq.*); *Breton-Le Goff*, *L’Influence des Organisations Non Gouvernementales*, 57 *et seq.*, each with further references.

⁴⁷ See, e.g., *Sell*, *Private Power*, 1 *et seq.*; *Ryan*, *Knowledge Diplomacy*, 67 *et seq.*; *Matthews*, *Globalising Intellectual Property Rights*, 7 *et seq.*; generally on the role of business organizations and transnational corporations in the regulatory scheme of global governance see also *Fuchs*, in: Schirm (ed.), *New Rules*, 133 *et seq.*

⁴⁸ UN Doc. E/CN.4/Sub.2/2003/12/Rev.2(2003) of 26 August 2003; see also *Weissbrodt/Kruger*, *American Journal of International Law* 97 (2003), 901 *et seq.*; *Vagts*, *Leiden Journal of International Law* 16 (2003), 795 *et seq.*; *Nowrot*, *Die UN-Norms*, 5 *et seq.*; *Hillemanns*, *German Law Journal* 4 (2003), 1065 *et seq.*

⁴⁹ Commission on Human Rights Decision 2004/116 of 20 April 2004, reprinted in: Report to the Economic and Social Council on the Sixtieth Session of the Commission, Draft Report of the Commission, UN Doc. E/CN.4/2004/L.11/Add.7 of 22 April 2004, 81 *et seq.*; see thereto also *Nowrot*, *Die Friedens-Warte* 79 (2004), 119 (137).

tions, as well as NGOs, business organizations, trade unions, transnational enterprises and individual scholars.⁵⁰

With regard to the sub-state level, it becomes increasingly obvious that states are, contrary to the previously dominant perception,⁵¹ often no longer acting as solid units in international relations. Rather, for example territorial sub-state entities such as regions are interacting with each other in transboundary cooperative regimes;⁵² administrative units below the level of government are, together with non-state actors, participating in international regulatory regimes such as the above mentioned standardization organizations.⁵³ Together with the evolving transgovernmental networks of national legislative bodies and courts, this phenomenon of the “disaggregated state” has recently been comprehensive described and analysed by *Anne-Marie Slaughter*, current President of the American Society of International Law, in her work called “A New World Order”.⁵⁴

To summarize, the term “global governance” does not at all refer to some kind of centralized world government.⁵⁵ Quite to the contrary it has already been described as “Governance Without Government”⁵⁶ – although it is probably more precise to speak of “Governance by, with and without Governments”⁵⁷ – leading to the evolution of a multidimensional regulatory system of networks and transnational legal as well as political processes that require us to broaden our understanding of international relations.⁵⁸

C. Reasons for the Emergence of Global Governance

What are the underlying reasons for this emerging regulatory scheme of global governance? The causes for this development are indeed manifold, making it impossible to discuss them all at length in the course of this contribution.⁵⁹ However, prominently among them are the processes that are commonly summarized by the term

⁵⁰ On the drafting history of this document and the involvement of the various different actors therein see *Nowrot*, *Die UN-Norms*, 5 *et seq.*; *Weissbrodt/Kruger*, in: Bergsmo (ed.), *Essays in Honour of Asbjørn Eide*, 421 (429 *et seq.*).

⁵¹ On the previous understanding of foreign policy as an exclusive prerogative of the government as the head of the executive branch see, e.g., *Tietje*, *Internationalisiertes Verwaltungshandeln*, 182 *et seq.*; *Cottier/Hertig*, *Max Planck Yearbook of United Nations Law* 7 (2003), 261 (265 *et seq.*); for a vivid example of such a view see only *Krüger*, *Allgemeine Staatslehre*, 24 *et seq.*, 507 *et seq.*

⁵² See only *Brand*, in: Cremer *et al.* (eds.), *Festschrift Steinberger*, 667 *et seq.*; with regard to regional cooperation in Europe see also recently the in-dept study provided by *Kotzur*, *Grenznachbarschaftliche Zusammenarbeit*, *passim*.

⁵³ With regard to the international cooperation of administrative units see especially the comprehensive analysis by *Tietje*, *Internationalisiertes Verwaltungshandeln*, *passim*, with further references.

⁵⁴ *Slaughter*, *A New World Order*, 2004; for a related observation already three decades ago with regard to sub-units of government see also *Keohane/Nye*, *World Politics* 27 (1974), 39 *et seq.*

⁵⁵ See only *Tietje*, *Journal of World Trade* 36 (2002), 501 (503); *Messner/Nuscheler*, in: Senghaas (ed.), *Frieden machen*, 337 (341).

⁵⁶ *Rosenau/Czempiel* (eds.), *Governance Without Government*, 1992.

⁵⁷ *Zangl/Zürn*, in: *Zangl/Zürn* (eds.), *Verrechtlichung*, 12 (14).

⁵⁸ See only *Tietje*, *Journal of World Trade* 36 (2002), 501 (503).

⁵⁹ For a more comprehensive analysis see, e.g., *Nowrot/Wardin*, *Liberalisierung der Wasserversorgung*, 49 *et seq.*, with further references.

“globalization”. Despite the prevailing concentration on the well-known economic side of globalization,⁶⁰ the economic aspect is only one among many other processes that contribute and belong to this phenomenon.⁶¹

Other relevant developments are, for example, the revolution in telecommunications and information technologies, most prominently being represented by the Internet, that are by many scholars considered to be the “basis of globalization”⁶² and made possible a permanent worldwide dialogue and exchange of information between people who share the same interests – whether benign or not;⁶³ the globalization of security interests caused by transnational organized crime⁶⁴ as well as the emergence of truly global terrorist networks;⁶⁵ the “globalization of public health”⁶⁶ resulting, *inter alia*, from the worldwide spread of infectious diseases;⁶⁷ and the phenomenon of what might be called “ecological globalization” caused by threats to the global environment such as climate change.⁶⁸

All these various processes of globalization, especially by way of reinforcing each other, have one thing in common: They lead to an increasing loss by states of their previously held and virtually unchallenged ability to control these processes even if they take place on their own territory.⁶⁹ In particular, states acting individually are to a growing extent lacking the necessary steering capacity to effectively channel the various processes of globalization to the benefit of their citizens and in pursuance of the

⁶⁰ See, e.g., the contributions by *Malanczuk*, in: Weiss *et al.* (eds.), *International Economic Law*, 45 (51 *et seq.*); *Hirst/Thompson*, in: Michie (ed.), *Handbook of Globalisation*, 17 *et seq.*; *Tita*, *Journal of World Trade* 32 (No. 3, 1998), 47 *et seq.*; *Nunnenkamp*, *German Yearbook of International Law* 39 (1996), 42 (45 *et seq.*); and recently *Bhagwati*, *Defense of Globalization*, 3 *et seq.*

⁶¹ On the understanding of globalization as a term describing a variety of processes see also *Delbrück*, *Indiana Journal of Global Legal Studies* 1 (1993), 9 (10 *et seq.*); *Aman*, *UCLA Law Review* 49 (2002), 1687 (1693 *et seq.*); *Hobe*, *AVR* 37 (1999), 253 (256 *et seq.*); *Dicke*, *BDGVR* 39 (2000), 13 (14); *Ruffert*, *Globalisierung als Herausforderung*, 12 *et seq.*; *Seita*, *Cornell International Law Journal* 30 (1997), 429 (430).

⁶² See, e.g., *Reisman*, *European Journal of International Law* 8 (1997), 409 (410); *Pernthaler*, in: Schäffer *et al.* (eds.), *Festschrift Kojas*, 69 (70); *von Bogdandy*, *ZaöRV* 63 (2003), 853 (856); *Peters*, *Verfassung Europas*, 130.

⁶³ On the effects of the modern information technologies see only *Grossman/Bradlow*, *American University Journal of International Law and Policy* 9 (1993), 1 (11 *et seq.*); *Engel*, *BDGVR* 39 (2000), 353 *et seq.*; *Hobe*, *Der offene Verfassungsstaat*, 286 *et seq.*

⁶⁴ See thereto, e.g., *Galeotti*, in: Josselin/Wallace (eds.), *Non-state Actors*, 203 *et seq.*; *Weenink*, in: Arts *et al.* (eds.), *Non-State Actors*, 279 *et seq.*

⁶⁵ From the voluminous literature on this issue see only recently the various contributions in *Walter et al.* (eds.), *Terrorism as a Challenge*, 3 *et seq.*, each with further references.

⁶⁶ *Fidler*, *Indiana Journal of Global Legal Studies* 5 (1997), 11.

⁶⁷ See thereto recently *Fidler*, *SARS, Governance and the Globalization of Disease*, 2004; for a comprehensive analysis of this issue see also *Fidler*, *International Law*, *passim*, with further references.

⁶⁸ On the notion of “ecological globalization” see only *Hingst*, *Auswirkungen der Globalisierung*, 26 *et seq.*, with further references.

⁶⁹ See thereto, e.g., *Delbrück*, *Das Staatsbild*, 10; *Tietje*, in: Delbrück (ed.), *International Law of Cooperation*, 45 (48); *Hobe*, *Duquesne University Law Review* 40 (2002), 655 (656); *Jackson*, *American Journal of International Law* 97 (2003), 782 (784, 799); *Ladeur*, in: Ladeur (ed.), *Public Governance*, 1 (9 *et seq.*); *Maull*, in: von Hoffmann (ed.), *Global Governance*, 31 (35); *Nowrot/Wardin*, *Liberalisierung der Wasserversorgung*, 51. However, for a more cautious view on this issue see also *Jennings*, in: Kreijen (ed.), *International Governance*, 27 (33 *et seq.*).

promotion of global public goods⁷⁰ such as the protection of human rights and the environment as well as the enforcement of core labour and social standards: Transnational enterprises can shift – or at least threaten to shift – their production plants to more “comfortable” places, transboundary capital movements can take place in minutes, individual states cannot successfully combat global warming or the worldwide spread of infectious diseases. This phenomenon of a “denationalization of clusters of political, economic and social activities”,⁷¹ caused by the processes of globalization, and the resulting decline in the steering capacity ultimately require states to create and participate in formal as well as informal cooperative mechanisms with not just other states and international organizations, but also with increasingly influential non-state actors like NGOs, business organizations, trade unions and transnational enterprises in order to provide an effective regulatory scheme for the political, economic, ecological, and social processes they are to a growing extent unable to control while acting on their own.⁷² Furthermore it forces states to tolerate self-regulatory mechanisms in areas that are nearly completely outside of their control.

Thus, in the absence of something close to a world government – whether such an institution would be feasible or even only desirable is an open question⁷³ – the processes of globalization require states to contribute to, to tolerate and to actively participate in the emergence of what is called global governance.

D. The Interrelationship between Global Governance and International Law

In light of these mere factual findings the following normative question arises: Is there an interrelationship between global governance and international law? And if so, what are the specific characteristics of this connection? In the following, it is argued that indeed a strong interrelationship exists between global governance on the one side and international law on the other.

I. The Significance of International Law in Global Governance

Beginning with the impact of international law on the regulatory scheme of global governance, it is common knowledge and thus hardly worth mentioning that formerly public international law had since the establishment of the so-called “Westphalian

⁷⁰ On the notion of “global public goods”, also being known as “community interests”, see only *Simma*, RdC 250 (1994), 217 (235 *et seq.*); *Delbrück*, in: Götz *et al.* (eds.), *Liber amicorum Jaenicke*, 17 (29 *et seq.*); *Frowein*, in: Hailbronner *et al.* (eds.), *Festschrift Doebling*, 219 *et seq.*; as well as the various contributions in *Kaul et al.* (eds.), *Global Public Goods*, 2 *et seq.*; and *Kaul et al.* (eds.), *Providing Global Public Goods*, 2 *et seq.*

⁷¹ *Delbrück*, *Indiana Journal of Global Legal Studies* 1 (1993), 9 (11).

⁷² On the necessity of this cooperative efforts see only *Tietje/Nowrot*, *European Business Organization Law Review* 5 (2004), 321 (347 *et seq.*); *Delbrück*, *Indiana Journal of Global Legal Studies* 11 (2004), 31 (32 *et seq.*); *Wahl*, in: Bohnert *et al.* (eds.), *Festschrift Hollerbach*, 193 (215); *Ruffert*, *Globalisierung als Herausforderung*, 48 *et seq.*; *Sassen*, *Chicago Journal of International Law* 1 (2000), 109 (110 *et seq.*), each with further references.

⁷³ See thereto, e.g., *Randelzhofer*, in: Isensee/Kirchhof (eds.), *Handbuch des Staatsrechts*, Vol. II, 143 (147), with further references.

system⁷⁴ basically confined itself to being a set of rules – often merely of a procedural nature – having the purpose to limit and guide states – as the sole subjects of international law – in their interactions with each other.⁷⁵ However, this traditional conception of international law has, already over the past few decades, undergone quite substantial changes. Most significantly, with regard to its contents, public international law has considerably extended its scope of application to areas that were previously thought to be in the exclusive competence of states⁷⁶ – for example with regard to the international protection of human rights, core labour and social standards, environmental protection, the prosecution of the worst of crimes, and probably – albeit still controversial – with regard to the legitimate form of government.⁷⁷ Thus, by transforming into what had already been called a “comprehensive blueprint for social life”,⁷⁸ international law is more and more independent of the will and interests of individual states. Rather, its substantive norms are increasingly focusing on the realization of community interests, the promotion of global public goods⁷⁹ – a process that for valid reasons has already been labelled the “constitutionalization of international law”.⁸⁰

It is submitted that it is precisely in this context of the realization of global public goods that the significance of international law in the regulatory framework of global governance lies. The substantive norms of international law provide the underlying values, the goals to be pursued by the various and diverse processes of global govern-

⁷⁴ Generally on the importance of the Westphalian peace treaties of 1648 as marking the “birth” of the modern interstate system *Delbrück*, SZIER 11 (2001), 1 (2 *et seq.*); *Perez*, Wisconsin International Law Journal 14 (1996), 463 (466); *Müllerson*, Ordering Anarchy, 99; *Suter*, Global Order, 17; *Kobona*, Journal of World Investment 2 (2001), 537 (538 *et seq.*).

⁷⁵ For a description of this traditional understanding of international law see only *Dahm/Delbrück/Wolfrum*, Völkerrecht, Vol. I/1, 23; *Fatouros*, in: *Mélanges Valticos*, 131 (139); *Henkin*, Georgia Journal of International and Comparative Law 25 (1995/96), 31 (32 *et seq.*); *Zemanek*, RdC 266 (1997), 9 (112); *Zacher*, in: *Rosenau/Czempiel* (eds.), *Governance Without Government*, 58 (59 *et seq.*); on the resulting issue of whether under these circumstances international law can be qualified as having a legal character at all see also *Hart*, *Concept of Law*, 213 *et seq.*; *Radbruch*, *Einführung*, 223 *et seq.*; *Franck*, *Power of Legitimacy*, 27 *et seq.*; *Brownlie*, *British Yearbook of International Law* 52 (1981), 1 *et seq.*; *D’Amato*, *Northwestern University Law Review* 79 (1984), 1293 *et seq.*

⁷⁶ See, e.g., *Friedmann*, *Changing Structure*, 67 *et seq.*, 152 *et seq.*; *Delbrück*, *Indiana Law Journal* 68 (1993), 705 (706 *et seq.*); *Tietje*, DVBl. 118 (2003), 1081 (1085); *Tomuschat*, RdC 281 (1999), 9 (63 *et seq.*); *Hobe*, *Der offene Verfassungsstaat*, 216 *et seq.*; *Zemanek*, RdC 266 (1997), 9 (112 *et seq.*); *Fassbender*, in: *Walker* (ed.), *Sovereignty in Transition*, 115 (139).

⁷⁷ On the last mentioned issue see, e.g., *Franck*, *American Journal of International Law* 86 (1992), 46 *et seq.*; *Franck*, *Fairness*, 83 *et seq.*; *Cerna*, *New York University Journal of International Law and Politics* 27 (1995), 289 *et seq.*; *Nowrot/Schabacker*, *American University International Law Review* 14 (1998), 321 (378 *et seq.*); as well as the contributions in *Fox/Roth* (eds.), *Democratic Governance*, 1 *et seq.*

⁷⁸ See thereto as well as on the quoted characterization *Tomuschat*, RdC 281 (1999), 9 (63 *et seq.*).

⁷⁹ *Tietje*, DVBl. 118 (2003), 1081 (1088); *Nowrot*, *Die Friedens-Warte* 79 (2004), 119 (141).

⁸⁰ See, e.g., *Frowein*, BDGVR 39 (2000), 427 *et seq.*; *Frowein*, RdC 248 (1994), 345 (355 *et seq.*); *Delbrück*, SZIER 11 (2001), 1 (35); *Bryde*, *Der Staat* 42 (2003), 61 *et seq.*; *Tietje*, DVBl. 118 (2003), 1081 (1088 *et seq.*); *Nowrot/Wardin*, *Liberalisierung der Wasserversorgung*, 45 *et seq.*; on the concept of “societal constitutionalism” as a further alternative theory to the traditional state-centred understanding of constitutionalism see recently *Teubner*, in: *Joerges et al.* (eds.), *Transnational Governance*, 3 *et seq.*; however, for a more sceptical view with regard to the constitutionalization of international law see *Grimm*, in: *Brenner et al.* (eds.), *Festschrift Badura*, 145 (163 *et seq.*); *Hillerhuber*, in: *Isensee/Kirchhof* (eds.), *Handbuch des Staatsrechts*, Vol. II, 929 (962).

ance. By providing these substantive guidelines, international law thereby ensures that global governance serves the purpose of contributing to, *inter alia*, the promotion of human rights, core labour and social standards and environmental protection.⁸¹ At the same time, international law thereby also creates the basis for the – especially with regard to the participation of non-state actors – often disputed legitimacy of the regulatory framework of global governance.⁸²

II. The Impact of Global Governance on the Structure of the International Legal Order

The question remains of what are on the other side the effects of global governance on international law? It is argued that the emergence of the regulatory scheme of global governance does not merely result in a continuation of the progressive development of international law that had already been visible in previous decades. Rather, under the impact of global governance, international law undergoes profound changes and is thereby transformed into something new – something that only remotely resembles the normative structure of what we have so far considered to be the international legal order. A number of terms have already been suggested to describe this “new international law”⁸³ – “global law”,⁸⁴ “new world law”,⁸⁵ “world (internal) law”,⁸⁶ “transnational law”.⁸⁷ Leaving aside the issue of how to label this – neutrally phrased – “new international law”, a selection of three basic concepts in international law are to be briefly highlighted in the following that require a reconceptualized understanding under the impact of global governance.

1. Sources of International Law

First, under the impact of global governance the enumeration of the classical sources of international law as most prominently being enshrined in Article 38 (1) of the Statute of the International Court of Justice is more or less outdated and in need

⁸¹ On the promotion of global public goods as the main focus of the regulatory processes of global governance see, e.g., *Tietje*, *Journal of World Trade* 36 (2002), 501 (503).

⁸² On the need for a reconceptualized, output-oriented understanding of legitimacy that focuses on the ability of the respective regulatory framework to contribute to the promotion of global public goods see, e.g., *Delbrück*, *Indiana Journal of Global Legal Studies* 10 (2003), 29 *et seq.*; *Tietje*, *DVBl.* 118 (2003), 1081 (1094 *et seq.*); *Steffek*, in: *Joerges et al.* (eds.), *Transnational Governance*, 81 *et seq.*; for a comprehensive analysis of the changing concept of legitimacy and the various approaches adopted in this connection see also *Peters*, *Verfassung Europas*, 499 *et seq.*

⁸³ See also, e.g., *Di Fabio*, *Staatsrechtslehre und der Staat*, 81, speaking of a “erneuerten Völkerrecht” [renewed international law].

⁸⁴ *Teubner* (ed.), *Global Law Without a State*, 1997.

⁸⁵ See, e.g., *Delbrück*, *Indiana Law Journal* 68 (1993), 705.

⁸⁶ *Delbrück*, *Indiana Journal of Global Legal Studies* 9 (2002), 401; *Delbrück*, in: *Bartosch/Wagner* (eds.), *Weltinnenpolitik*, 55 (65).

⁸⁷ *Jessup*, *Transnational Law*, 1956; with regard to the emergence of a “transnational economic law” see also *Tietje*, *ZVglRWiss* 101 (2002), 404 *it seq.*

of a supplementation.⁸⁸ The growing diversity of law-making processes in the international system, the increasingly blurred distinction between hard law and in the traditional sense non-legally binding regulatory instruments, as well as the rising importance of non-state actors in these processes are no longer adequately reflected in this provision.⁸⁹ However, Article 38 of the ICJ-Statute not only requires a supplementation with regard to the possible sources of international law, but is also in need of a reconceptualized understanding of the classical sources already enumerated in it. In this connection – to give only one example⁹⁰ – it is suggested that the traditional etatistic understanding of “state practice”, being one of the constitutive elements of customary international law, has to be modified by also directly⁹¹ taking into account the practice of powerful non-state actors like a number of NGOs and transnational enterprises as increasingly influential participants in global governance.⁹² Interestingly enough, the wording of Article 38 (1) lit. b of the ICJ-Statute allows such a reinterpretation because it speaks only of “international custom, as evidence of a general practice accepted as law” without restricting the possible scope of acting and contributing entities. In addition, this preposition is supported by the fact that already as of today the overwhelming majority of international legal scholars considers international governmental organizations to be in a position to contribute through their practice to the formation of customary international law.⁹³

2. Prerequisites for Legal Personality under International Law

Second, in light of the emergence of global governance also the traditional prerequisites for international legal personality – namely the explicit granting by states of rights or duties under international law to the entity in question⁹⁴ – have to be consid-

⁸⁸ Generally on the discussion of whether Article 38 (1) of the ICJ-Statute contains an exhaustive list of the sources of international law see, e.g., *Danilenko*, *Law-Making*, 30 *et seq.*; *Riedel*, *European Journal of International Law* 2 (1991), 58 (60 *et seq.*); *Zemanek*, in: *Hafner et al.* (eds.), *Liber Amicorum Seidl-Hohenveldern*, 843 (844); *Rosenne*, *RdC* 291 (2001), 9 (49); *Fastenrath*, *Lücken im Völkerrecht*, 84 *et seq.*

⁸⁹ *Tietje*, *Journal of World Trade* 36 (2002), 501 (503) (“legally relevant interrelated activities of governments, international organizations and private actors that can no longer be explained any more simply by referring to the classical sources of public international law in the sense of Article 38 (1) of the Statute of the International Court of Justice”).

⁹⁰ On the need for a reconceptualized understanding of the sources of international law in general see only *Delbrück*, *Indiana Journal of Global Legal Studies* 9 (2002), 401 (414 *et seq.*); *Tietje*, *German Yearbook of International Law* 42 (1999), 26 *et seq.*; *Fidler*, *Chicago Journal of International Law* 2 (2001), 137 *et seq.*

⁹¹ With regard to the already currently visible indirect influence of non-state actors on the formation of customary international law see, e.g., *Roberts*, *American Journal of International Law* 95 (2001), 757 (774 *et seq.*); *Nowrot*, *Indiana Journal of Global Legal Studies* 6 (1999), 579 (595).

⁹² See thereto also *Hobe*, *AVR* 37 (1999), 253 (266 *et seq.*); as well as, *de lege ferenda*, *Gunning*, *Virginia Journal of International Law* 31 (1991), 211 (227 *et seq.*).

⁹³ See only *Brownlie*, *Principles*, 6; *Hobe*, *AVR* 37 (1999), 253 (267); for example as early as in ICJ, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Reports 1951, 15 (24 *et seq.*), the Court refers to the respective practice of the Council of the League of Nations.

⁹⁴ See, e.g., *Jennings/Watts*, *Oppenheim's International Law*, Vol. I/1, 16; *Brownlie*, *Principles*, 57 *et seq.*; *Cassese*, *International Law*, 46; *Shaw*, *International Law*, 176 *et seq.*

ered as being an increasingly inappropriate approach for the identification of normative responsibilities of influential non-state actors in the international system.⁹⁵

A broad consensus exists among international legal scholars that the international society can be characterized as a community governed by the rule of law.⁹⁶ Thus, it is the purpose of the international society to pursue international stability, avoid disputes, and the arbitrary exercise of power.⁹⁷ In order to pursue these goals – that are necessary for the continued existence of the international community⁹⁸ – in an effective way, the development of the international legal order has always been dependent upon a close conformity to the realities in the international system as already been pointed out by the International Court of Justice in *Reparations for Injuries* in 1949.⁹⁹ As a consequence, the recognition of international subjectivity also has to orientate itself to the changing sociological circumstances on the international scene.¹⁰⁰ The international legal order needs to set the relations between all the *de facto* powerful entities in the international system on a legal basis,¹⁰¹ since a failure to bring major actors under the international rule of law “imposes unnecessary risks on the inherently frail international legal system”.¹⁰²

Thus, contrary to the current predominant view, it follows from these findings that in light of the aims to be pursued by the international legal order, a rebuttable presumption arises – already on the basis of a *de facto* influential position in the international system – in favour of the respective actor being subject to applicable international legal obligations with regard to the promotion of community interests such as human rights, environmental protection and core labour and social standards.¹⁰³ This presumption can only be refuted by way of a contrary expression of the international community in a legally binding form stating that the respective category of actors is

⁹⁵ For a general critique of the currently predominant concept of international legal personality see also, e.g., *Higgins*, Problems and Process, 50; *Allott*, *Eunomia*, 372 *et seq.*

⁹⁶ See thereto, e.g., *Jessup*, in: *Jessup*, The Use of International Law, 1 *et seq.*; *Mosler*, RdC 140 (1974), 1 (31 *et seq.*); *Watts*, in: *Byers* (ed.), Role of Law, 5 *et seq.*; *Simma*, RdC 250 (1994), 217 (256 *et seq.*); *Tomuschat*, RdC 241 (1993), 195 (216 *et seq.*); *Nowrot*, *Indiana Journal of Global Legal Studies* 6 (1999), 579 (607 *et seq.*).

⁹⁷ On these purposes of the international legal society see only *Watts*, *German Yearbook of International Law* 36 (1993), 15 (21 *et seq.*); *Debrück*, in: *Dicke et al.* (eds.), *Konstitution des Friedens*, 275 (281 *et seq.*); *Jessup*, *Michigan Law Review* 45 (1947), 383 (384); *Nowrot*, *Indiana Journal of Global Legal Studies* 6 (1999), 579 (613); generally on the function of law in the international community see also *Allott*, *Indiana Journal of Global Legal Studies* 5 (1998), 391 *et seq.*; as well as *Lauterpacht*, *The Function of Law in the International Community*, 1933.

⁹⁸ See thereto only *Mosler*, in: *Bernhardt* (ed.), *E.P.I.L.*, Vol. II, 1251 (1254).

⁹⁹ ICJ, *Reparations for Injuries Suffered in the Service of the United Nations*, ICJ Reports 1949, 174 (178); see also, e.g., *Hobe/Kimminich*, *Völkerrecht*, 65; *Bryde*, *Verhaltensregeln*, 3; *Nowrot*, *Indiana Journal of Global Legal Studies* 6 (1999), 579 (613 *et seq.*); on the resulting need for an interdisciplinary approach to international law see only *Jennings*, in: *Anghie/Sturgess* (eds.), *Essays in Honour of Weeramantry*, 497 (506); *Nowrot*, *Die Friedens-Warte* 79 (2004), 119 (144 *et seq.*); as well as for an in-dept discussion of this issue *Slaughter*, RdC 285 (2000), 9 *et seq.*

¹⁰⁰ See thereto *Tietje/Nowrot*, *NZWehr* 44 (2002), 1 (12); *Thürer*, in: *Hofmann* (ed.), *Non-State Actors*, 37 (58); *Okeke*, *Controversial Subjects*, 217.

¹⁰¹ *Dahm/Delbrück/Wolfrum*, *Völkerrecht*, Vol. II/2, 257; *Thürer*, in: *Hofmann* (ed.), *Non-State Actors*, 37 (58); *Tietje/Nowrot*, *NZWehr* 44 (2002), 1 (12).

¹⁰² *Charney*, *Duke Law Journal* 1983, 748 (754).

¹⁰³ For a more detailed discussion of this new approach with regard to the establishment of international legal personality see *Nowrot*, *Die Friedens-Warte* 79 (2004), 119 (139 *et seq.*).

not obliged to observe human rights as well as recognized environmental and labour standards. This last mentioned option has thereby to be regarded as a currently still necessary concession to the still predominant position especially of states in the international system and the resulting possibility of these actors to influence, to a certain extent, the granting of subjectivity under international law.

It is submitted that this new concept concerning the establishment of international legal personality – which would currently apply especially to some transnational corporations and NGOs – is clearly more in conformity with the evolving image of an international legal community which has as its central aim the civilization of international relations and the promotion of global public goods to the benefit of all.

3. State Sovereignty

Third, under the impact of global governance, the necessity arises for a reconceptualized understanding of the sovereignty of states.¹⁰⁴ It is not argued that states are no longer of importance in the newly evolving international system. Overall, they still remain influential actors¹⁰⁵ – in some areas, such as the use of force, more influential,¹⁰⁶ in other areas, like for example the international economic system, considerably less important.¹⁰⁷ However, under the influence of globalization, states are increasingly incorporated in the multi-layered scheme of global governance¹⁰⁸ – and their position in these regulatory processes often cannot even be characterized as being *primus inter pares*. Therefore, in order to describe the modified understanding of state sovereignty, recourse can be taken to *Abram Chayes*, former professor at Harvard Law School, and *Antonia Handler Chayes*, former Undersecretary of the U.S. Air Force, who in their outstanding work called “The New Sovereignty” already in 1995 stated that:

“It is that for all but a few self-isolated nations, sovereignty no longer consists in the freedom of states to act independently, in their perceived self-interest, but in membership in reasonably good standing in the regimes that make up the substance of international life.”¹⁰⁹

¹⁰⁴ Generally on the reconceptualized understanding of sovereignty in current international law see also, e.g., *Delbrück*, SZIER 11 (2001), 1 (31 *et seq.*); *Schreuer*, European Journal of International Law 4 (1993), 447 *et seq.*; *Henkin*, in: MacDonald (ed.), Essays in Honour of Wang Tieya, 351 *et seq.*; *Schachter*, in: *ibid.*, 671 *et seq.*; *Frowein*, in: Starck (ed.), Constitutionalism, 53 (54); *Fassbender*, in: Walker (ed.), Sovereignty in Transition, 115 *et seq.*; *Zürn*, in: Appelbaum *et al.* (eds.), Rules and Networks, 39 *et seq.*

¹⁰⁵ See also, e.g., *Delbrück*, Indiana Journal of Global Legal Studies 2 (1994), 45 (63); *Schachter*, Columbia Journal of Transnational Law 36 (1997), 7 (22); *Tietje*, Internationalisiertes Verwaltungshandeln, 165 *et seq.*; *Aman*, Indiana Journal of Global Legal Studies 8 (2001), 379 (387); *Fox*, Indiana Journal of Global Legal Studies 7 (1999), 35 (77).

¹⁰⁶ See only *Isensee*, in: Mellinshoff *et al.* (eds.), Erneuerung des Verfassungsstaates, 7 (8 *et seq.*).

¹⁰⁷ In this connection see, e.g., *Jackson*, American University Journal of International Law and Policy 10 (1995), 595 (603) (“there is hardly any subject that can be said to be effectively controlled by a single national sovereign”).

¹⁰⁸ *Kokott*, VVDStRL 63 (2004), 7 (23 *et seq.*), with further references.

¹⁰⁹ *Chayes/Handler Chayes*, The New Sovereignty, 27.

To summarize, global governance and international law are mutually affecting each other: While the substantive norms of international law provide the goals to be pursued by global governance in order to gain legitimacy; the regulatory scheme of global governance has a profound impact on the structure of international law by, *inter alia*, expanding the kind of relevant law-making and law-enforcement processes in the international legal order, as well as by increasing the number of participants being of relevance in these processes, and thereby also changing the role of the nation state in the international system.

E. Conclusion

In concluding, however, it has to be emphasised that this transformation of the international legal order taking place under the impact of global governance into a “new international law” is, of course, not a constant and linear process.¹¹⁰ Especially very powerful states, but also a number of other countries, try to resist, or do – at least in the short run – even successfully resist some of the developments outlined above.¹¹¹ They partially try to “opt out” of global governance. In other words, one cannot deny that occasional “backlashes” in this transformation process do in fact occur, caused by actions of what might be appropriated labelled “state sovereignty liberation movements” comprising especially of certain governments. One only has to point to the controversy with regard to the establishment of the International Criminal Court¹¹² as well as a number of other well-known instances in recent years. For an appropriate comment on these “backlashes” recourse can again be taken to *Abram Chayes* and *Antonia Handler Chayes* who stated in their above mentioned work that:

“The largest and most powerful states can sometimes get their way through sheer exertion of will, but even they [and one might add: not to talk about other countries] cannot achieve their principal purposes – security, economic well-being, and a decent level of amenity for their citizens – without the help and cooperation of many other participants in the system, including entities that are not states at all.”¹¹³

¹¹⁰ See also recently with regard to a more cautious view on this transformation process *Oeter*, in: Zangl/Zürn (eds.), *Verrechtlichung*, 46 *et seq.*

¹¹¹ Generally on the problematic issue of integrating great powers into the international legal order see, e.g., *Delbrück*, in: Frowein *et al.* (eds.), *Liber Amicorum Eitel*, 23 *et seq.*; specifically with regard to the United States see recently the comprehensive study provided by *Murphy*, *The United States and the Rule of Law in International Affairs*, 2004; as well as the various contributions in *Byers/Nolte* (eds.), *United States Hegemony and the Foundations of International Law*, 2003.

¹¹² From the already as of today voluminous literature on this topic see only *Kaul*, VN 52 (2004), 141 (147 *et seq.*); *Kaul*, in: Fischer *et al.* (eds.), *International and National Prosecution*, 21 *et seq.*; *Kaul*, VN 49 (2001), 215 (218 *et seq.*); *Nolte*, in: Malone/Khong (eds.), *Unilateralism*, 71 *et seq.*; *Reisman*, *Journal of International Criminal Justice* 2 (2004), 17 *et seq.*; *Tan*, *American University International Law Review* 19 (2004), 1115 *et seq.*; *Schwartz*, *Chicago Journal of International Law* 4 (2003), 223 *et seq.*; *Horton*, *Whittier Law Review* 24 (2003), 1041 *et seq.*

¹¹³ *Chayes/Handler Chayes*, *The New Sovereignty*, 27.

REFERENCES

- Abbott, Kenneth W./Snidal, Duncan*, Hard and Soft Law in International Governance, *International Organization* 54 (2000), 421-456.
- Allen, Ted*, The Philippine Children's Case: Recognizing Legal Standing for Future Generations, *Georgetown International Environmental Law Review* 6 (1994), 713-741.
- Allott, Philip*, *The Health of Nations – Society and Law beyond the State*, Cambridge 2002.
- The True Function of Law in the International Community, *Indiana Journal of Global Legal Studies* 5 (1998), 391-413.
 - *Eunomia: New Order for a New World*, Oxford/New York 1990.
- Alvarez, Jose E.*, Why Nations Behave, *Michigan Journal of International Law* 19 (1998), 303-317.
- Aman, Alfred C., Jr.*, Globalization, Democracy, and the Need for a New Administrative Law, *UCLA Law Review* 49 (2002), 1687-1716.
- The Limits of Globalization and the Future of Administrative Law: From Government to Governance, *Indiana Journal of Global Legal Studies* 8 (2001), 379-400.
- D'Amato, Anthony*, Is International Law Really 'Law'?, *Northwestern University Law Review* 79 (1984), 1293-1314.
- Baade, Hans W.*, The Legal Effects of Codes of Conduct for Multinational Enterprises, in: Horn, Norbert (ed.), *Legal Problems of Codes of Conduct for Multinational Enterprises*, Antwerp/Boston/London *et al.* 1980, 3-38.
- Benedek, Wolfgang*, Die Rechtsordnung des GATT aus völkerrechtlicher Sicht, Berlin/Heidelberg/New York *et al.* 1990.
- Bernstorff, Jochen von*, The Structural Limitations of Network Governance: ICANN as Case in Point, in: Joerges, Christian/Sand, Inger-Johanne/Teubner, Gunther (eds.), *Transnational Governance and Constitutionalism*, Oxford/Portland 2004, 257-281.
- Bhagwati, Jagdish*, *In Defense of Globalization*, Oxford/New York 2004.
- Blainpain, Roger* (ed.), *Multinational Enterprises and the Social Challenges of the XXIst Century*, The Hague/London/Boston 2000.
- Bogdandy, Armin von*, Demokratie, Globalisierung, Zukunft des Völkerrechts – eine Bestandsaufnahme, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 63 (2003), 853-877.
- Braithwaite, John/Drabos, Peter*, *Global Business Regulation*, Cambridge 2000.
- Brand, Dirk J.*, The Role of Provinces in International Relations, in: Cremer, Hans-Joachim/Giegerich, Thomas/Richter, Dagmar/Zimmermann, Andreas (eds.), *Tradition und Weltoffenheit des Rechts – Festschrift für Helmut Steinberger*, Berlin/Heidelberg/New York *et al.* 2002, 667-680.
- Breton-Le Goff, Gaëlle*, *L'Influence des Organisations Non Gouvernementales (ONG) sur la Négociation de quelques Instruments Internationaux*, Brussels 2001.
- Brownlie, Ian*, *Principles of Public International Law*, 6th ed., Oxford/New York 2003.
- The Reality and Efficacy of International Law, *British Yearbook of International Law* 52 (1981), 1-8.

- Bryde*, Brun-Otto, Konstitutionalisierung des Völkerrechts und Internationalisierung des Verfassungsrechts, *Der Staat* 42 (2003), 61-75.
- Internationale Verhaltensregeln für Private – Völkerrechtliche und verfassungsrechtliche Aspekte, Frankfurt am Main 1981.
- Byers*, Michael/*Nolte*, Georg (eds.), *United States Hegemony and the Foundations of International Law*, Cambridge/New York 2003.
- Cable*, Vincent, *Globalization and Global Governance*, London/New York 1999.
- Campins-Eritja*, Mar/*Gupta*, Joyeeta, Non-State Actors and Sustainability Labelling Schemes: Implications for International Law, *Non-State Actors and International Law* 2 (2002), 213-240.
- Cassese*, Antonio, *International Law*, Oxford/New York 2001.
- Cerna*, Christina M., Universal Democracy: An International Legal Right or the Pipe Dream of the West?, *New York University Journal of International Law and Politics* 27 (1995), 289-329.
- Charney*, Jonathan I., International Lawmaking – Article 38 of the ICJ Statute Reconsidered, in: Delbrück, Jost (ed.), *New Trends in International Lawmaking – International ‘Legislation’ in the Public Interest*, Berlin 1997, 171-191.
- Universal International Law, *American Journal of International Law* 87 (1993), 529-551.
 - Transnational Corporations and Developing Public International Law, *Duke Law Journal* 1983, 748-788.
- Chayes*, Abram/*Handler Chayes*, Antonia, *The New Sovereignty – Compliance with International Regulatory Agreements*, Cambridge/London 1995.
- Commission on Global Governance*, *Our Global Neighbourhood*, Oxford/New York 1995.
- Conaty*, Sean, The Potential Utility of Joint Implementation Mechanisms in the Kyoto Protocol, *Asia Pacific Journal of Environmental Law* 3 (1998), 363-375.
- Cottier*, Thomas/*Hertig*, Maya, The Prospects of 21st Century Constitutionalism, *Max Planck Yearbook of United Nations Law* 7 (2003), 261-328.
- Cutler*, A. Claire, *Private Power and Global Authority – Transnational Merchant Law in the Global Political Economy*, Cambridge 2003.
- Dahm*, Georg/*Delbrück*, Jost/*Wolftrum*, Rüdiger, *Völkerrecht*, Vol. I/3, 2nd ed., Berlin 2002.
- *Völkerrecht*, Vol. I/2, 2nd ed., Berlin 2002.
 - *Völkerrecht*, Vol. I/1, 2nd ed., Berlin/New York 1989.
- Danilenko*, Gennady M., *Law-Making in the International Community*, Dordrecht/Boston/London 1993.
- Delbrück*, Jost, Transnational Federalism: Problems and Prospects of Allocating Public Authority Beyond the State, *Indiana Journal of Global Legal Studies* 11 (2004), 31-55.
- Exercising Public Authority Beyond the State: Transnational Democracy and/or Alternative Legitimation Strategies?, *Indiana Journal of Global Legal Studies* 10 (2003), 29-43.
 - Right v. Might – Great Power Leadership in the Organized International Community of States and the Rule of Law, in: Frowein, Jochen Abr./Scharioth, Klaus/Winkelmann, Ingo/Wolfrum, Rüdiger (eds.), *Verhandeln für den Frieden/Negotiating for Peace – Liber Amicorum Tono Eitel*, Berlin/Heidelberg/New York *et al.* 2003, 23-39.
 - Prospects for a “World (Internal) Law?": Legal Developments in a Changing International System, *Indiana Journal of Global Legal Studies* 9 (2002), 401-431.
 - Das Staatsbild im Zeitalter wirtschaftsrechtlicher Globalisierung, Halle/Saale 2002.

- Structural Changes in the International System and its Legal Order: International Law in the Era of Globalization, *Schweizerische Zeitschrift für Internationales und Europäisches Recht* 11 (2001), 1-36.
 - “Laws in the Public Interest” – Some Observations on the Foundations and Identification of erga omnes Norms in International Law, in: Götz, Volkmar/Selmer, Peter/Wolfrum, Rüdiger (eds.), *Liber amicorum Günther Jaenicke – Zum 85. Geburtstag*, Berlin/Heidelberg/New York 1998, 17-36.
 - Von der Staatenordnung über die internationale institutionelle Kooperation zur ‘supraterritorial or global governance’: Wandel des zwischenstaatlichen Völkerrechts zur Rechtsordnung des Menschen und der Völker?, in: Bartosch, Ulrich/Wagner, Jochen (eds.), *Weltinnenpolitik – Internationale Tagung anlässlich des 85. Geburtstags von Carl-Friedrich von Weizsäcker*, Münster 1998, 55-65.
 - Peace Through Emerging International Law, in: Jost Delbrück, *Die Konstitution des Friedens als Rechtsordnung*, edited by Klaus Dicke, Stephan Hobe, Karl-Ulrich Meyn, Eibe Riedel and Hans-Joachim Schütz, Berlin 1996, 275-292.
 - Global Migration – Immigration – Multiethnicity: Challenges to the Concept of the Nation-State, *Indiana Journal of Global Legal Studies* 2 (1994), 45-64.
 - Globalization of Law, Politics, and Markets – Implications for Domestic Law – A European Perspective, *Indiana Journal of Global Legal Studies* 1 (1993), 9-36.
 - A More Effective International Law or a New “World Law”? – Some Aspects of the Development of International Law in a Changing International System, *Indiana Law Journal* 68 (1993), 705-725.
 - Non-judicial Procedures of Enforcement of Internationally Protected Human Rights with Special Emphasis on the Human Rights Practice of UNESCO, in: Delbrück, Jost/Rauschnig, Dietrich/Walter, Rudolf/Schweisfurth, Theodor (eds.), *Neuntes deutsch-polnisches Juristen-Kolloquium*, Baden-Baden 1992, 31-45.
 - Die Entwicklung außerrechtlicher internationaler Verhaltensnormen unter den Bedingungen nuklearer Abschreckung, in: Nerlich, Uwe/Rendtorff, Trutz (eds.), *Nukleare Abschreckung – Politische und ethische Interpretationen einer neuen Realität*, Baden-Baden 1989, 353-377.
- De Ly*, Filip, *Lex Mercatoria (New Law Merchant): Globalisation and International Self-Regulation*, in: Appelbaum, Richard P./Felstinger, William L.F./Gessner, Volkmar (eds.), *Rules and Networks – The Legal Culture of Global Business Transactions*, Oxford/Portland 2001, 159-188.
- Dicke*, Klaus, *Erscheinungsformen und Wirkungen von Globalisierung in Struktur und Recht des internationalen Systems auf universaler und regionaler Ebene sowie gegenläufige Renationalisierungstendenzen*, *Berichte der Deutschen Gesellschaft für Völkerrecht* 39 (2000), 13-44.
- Di Fabio*, Udo, *Die Staatsrechtslehre und der Staat*, Paderborn/München/Wien *et al.* 2003.
- Dijk*, Pieter van, *Normative Force and Effectiveness of International Norms*, *German Yearbook of International Law* 30 (1987), 9-35.
- Downs*, George W., *Enforcement and the Evolution of Cooperation*, *Michigan Journal of International Law* 19 (1998), 319-344.
- Duruigbo*, Emeka A., *Multinational Corporations and International Law – Accountability and Compliance Issues in the Petroleum Industry*, Ardsley 2003.

- Engel*, Christoph, Das Internet und der Nationalstaat, *Berichte der Deutschen Gesellschaft für Völkerrecht* 39 (2000), 353-425.
- Fassbender*, Bardo, Sovereignty and Constitutionalism in International Law, in: Walker, Neil (ed.), *Sovereignty in Transition*, Oxford/Portland 2003, 115-143.
- Fastenrath*, Ulrich, *Lücken im Völkerrecht*, Berlin 1991.
- Fatouros*, Arghyrios A., International Law in the Era of Global Integration, in: *Mélanges en l'Honneur de Nicolas Valticos – Droit et Justice*, Paris 1999, 131-148.
- Fidler*, David P., SARS, Governance and the Globalization of Disease, Houndsmills/New York 2004.
- The Return of the Standard of Civilization, *Chicago Journal of International Law* 2 (2001), 137-157.
 - *International Law and Infectious Diseases*, Oxford/New York 1999.
 - The Globalization of Public Health: Emerging Infectious Diseases and International Relations, *Indiana Journal of Global Legal Studies* 5 (1997), 11-51.
 - Challenging the Classical Concept of Custom: Perspectives on the Future of Customary International Law, *German Yearbook of International Law* 39 (1996), 198-248.
- Fitzmaurice*, Malgosia, The Right of the Child to a Clean Environment, *Southern Illinois University Law Journal* 23 (1999), 611-656.
- Fox*, Gregory H., Strengthening the State, *Indiana Journal of Global Legal Studies* 7 (1999), 35-77.
- Fox*, Gregory H./*Roth*, Brad R. (eds.), *Democratic Governance and International Law*, Cambridge 2000.
- Francioni*, Francesco, International 'soft law': A Contemporary Assessment, in: Lowe, Vaughan/Fitzmaurice, Malgosia (eds.), *Fifty years of the International Court of Justice – Essays in honour of Sir Robert Jennings*, Cambridge 1996, 167-178.
- Franck*, Thomas M., *Fairness in International Law and Institutions*, Oxford 1995.
- The Emerging Right to Democratic Governance, *American Journal of International Law* 86 (1992), 46-91.
 - *The Power of Legitimacy Among Nations*, New York/Oxford 1990.
- Friedmann*, Wolfgang, *The Changing Structure of International Law*, New York 1964.
- Frowein*, Jochen Abr., Konstitutionalisierung des Völkerrechts, *Berichte der Deutschen Gesellschaft für Völkerrecht* 39 (2000), 427-447.
- Constitutionalism in the Face of the Changing Nation State, in: Starck, Christian (ed.), *Constitutionalism, Universalism and Democracy – A Comparative Analysis*, Baden-Baden 1999, 53-70.
 - Reactions by not Directly Affected States to Breaches of Public International Law, *Recueil des Cours* 248 (1994), 345-437.
 - Das Staatengemeinschaftsinteresse – Probleme bei Formulierung und Durchsetzung, in: Hailbronner, Kay/Ress, Georg/Stein, Torsten (eds.), *Staat und Völkerrechtsordnung – Festschrift für Karl Doehring*, Berlin/Heidelberg/New York *et al.* 1989, 219-228.
- Fuchs*, Doris A., The Role of Business in Global Governance, in: Schirm, Stefan A. (ed.), *New Rules for Global Markets – Public and Private Governance in the World Economy*, Houndsmills/New York 2004, 133-154.
- Galeotti*, Mark, Underworld and Upperworld: Transnational Organized Crime and Global Society, in: Josselin, Daphné/Wallace, William (eds.), *Non-state Actors in World Politics*, Houndmill/New York 2001, 203-217.

- Genugten, Willem van/Bijsterveld, Sophie van*, Codes of Conduct for Multinational Enterprises: Useful Instruments or a Shield Against Binding Responsibility?, *Tilburg Foreign Law Review* 7 (1998), 161-177.
- Grimm, Dieter*, Die Verfassung im Prozess der Entstaatlichung, in: Brenner, Michael/Huber Peter M./Möstl, Markus (eds.), *Der Staat des Grundgesetzes – Kontinuität und Wandel – Festschrift für Peter Badura zum siebzigsten Geburtstag*, Tübingen 2004, 145-167.
- Grossman, Claudio/Bradlow, Daniel D.*, Are We Being Propelled Towards a People-Centered Transnational Legal Order?, *American University Journal of International Law and Policy* 9 (1993), 1-25.
- Gunning, Isabelle R.*, Modernizing Customary International Law: The Challenge of Human Rights, *Virginia Journal of International Law* 31 (1991), 211-247.
- Hall, Sarah M.*, Multinational Corporation's Post-Unocal Liabilities for Violations of International Law, *George Washington International Law Review* 34 (2002), 401-433.
- Hart, H.L.A.*, *The Concept of Law*, 2nd ed. with a postscript edited by Penelope A. Bulloch and Joseph Raz, Oxford/New York 1994.
- Henkin, Louis*, Human Rights and State "Sovereignty", *Georgia Journal of International and Comparative Law* 25 (1995/96), 31-45.
- The Mythology of Sovereignty, in: MacDonald, Ronald St. John (ed.), *Essays in Honour of Wang Tieya*, Dordrecht/Boston/London 1994, 351-358.
- Higgins, Rosalyn*, *Problems and Process – International Law and How We Use It*, Oxford/New York 1994.
- Hillemanns, Carolin F.*, UN Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with regard to Human Rights, *German Law Journal* 4 (2003), 1065-1080.
- Hillgruber, Christian*, Der Nationalstaat in der überstaatlichen Verflechtung, in: Isensee, Josef/Kirchhof, Paul (eds.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Vol. II, 3rd ed., Heidelberg 2004, 929-992.
- Hingst, Ulla*, *Auswirkungen der Globalisierung auf das Recht der völkerrechtlichen Verträge*, Berlin 2001.
- Hirst, Paul/Thompson, Grahame*, The Future of Globalisation, in: Michie, Jonathan (ed.), *The Handbook of Globalisation*, Cheltenham/Northampton 2003, 17-36.
- Hobe, Stephan*, The Era of Globalisation as a Challenge to International Law, *Duquesne University Law Review* 40 (2002), 655-665.
- Die Zukunft des Völkerrechts im Zeitalter der Globalisierung – Perspektiven der Völkerrechtsentwicklung im 21. Jahrhundert, *Archiv des Völkerrechts* 37 (1999), 253-282.
- Der offene Verfassungsstaat zwischen Souveränität und Interdependenz, Berlin 1998.
- Global Challenges to Statehood: The Increasingly Important Role of Nongovernmental Organizations, *Indiana Journal of Global Legal Studies* 5 (1997), 191-209.
- Hobe, Stephan/Kimminich, Otto*, *Einführung in das Völkerrecht*, 8th ed., Tübingen/Basel 2004.
- Horchani, Ferhat*, Le Droit International des Investissements à l'heure de la Mondialisation, *Journal du Droit International* 131 (2004), 367-417.
- Horton, Regina*, The Long Road to Hypocrisy: The United States and the International Criminal Court, *Whittier Law Review* 24 (2003), 1041-1075.
- Hufbauer, Gary C./Mitrokostas, Nicholas K.*, International Implications of the Alien Tort Statute, *Journal of International Economic Law* 7 (2004), 245-262.

- Isesee*, Josef, Der Verfassungsstaat als Friedensgarant, in: Mellinghoff, Rudolf/Morgenthaler, Gerd/Puhl, Thomas (eds.), Die Erneuerung des Verfassungsstaates – Symposium aus Anlass des 60. Geburtstages von Professor Dr. Paul Kirchhof, Heidelberg 2003, 7-43.
- Jackson*, John H., Sovereignty-Modern: A New Approach to an Outdated Concept, *American Journal of International Law* 97 (2003), 782-802.
- International Economic Law: Reflections on the “Boilerroom” of International Relations, *American University Journal of International Law and Policy* 10 (1995), 595-606.
- Jennings*, Sir Robert, Sovereignty and International Law, in: Kreijen, Gerard (ed.), State, Sovereignty, and International Governance, Oxford/New York/Auckland *et al.* 2002, 27-44.
- Broader Perspectives in International Law, in: Anghie, Antony/Sturgess, Garry (eds.), Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry, The Hague/London/Boston 1998, 497-507.
- Jennings*, Sir Robert/*Watts*, Sir Arthur, *Oppenheim’s International Law*, Vol. I, Introduction and Part 1, 9th ed., Harlow 1992.
- Jessup*, Philip C., The International Community Subject to the Law, in: Jessup, Philip C., The Use of International Law – Five Lectures Delivered at the University of Michigan: February 27, 28, March 3, 6, and 7, 1958, Ann Arbor 1959, 1-29.
- Transnational Law, New Haven 1956.
 - The Subjects of a Modern Law of Nations, *Michigan Law Review* 45 (1947), 383-408.
- Johnson*, Eric, *Kadic v. Karadzic and Doe I and II v. Karadzic: The Latest Stage in Alien Tort Act Jurisprudence*, *German Yearbook of International Law* 39 (1996), 434-467.
- Joseph*, Sarah, *Corporations and Transnational Human Rights Litigation*, Oxford/Portland 2004.
- Kamminga*, Menno T./*Zia-Zarifi*, Saman (eds.), *Liability of Multinational Corporations under International Law*, The Hague/London/Boston 2000.
- Karl*, Joachim, The OECD Guidelines for Multinational Enterprises, in: Addo, Michael K. (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, The Hague/London/Boston 1999, 89-106.
- Kaul*, Hans-Peter, Baustelle für mehr Gerechtigkeit – Der Internationale Strafgerichtshof in seinem zweiten Jahr, *Vereinte Nationen* 52 (2004), 141-149.
- Der Aufbau des Internationalen Strafgerichtshofs – Schwierigkeiten und Fortschritte, *Vereinte Nationen* 49 (2001), 215-222.
 - The Continuing Struggle on the Jurisdiction of the International Criminal Court, in: Fischer, Horst/Kreß, Claus/Lüder, Sascha Rolf (eds.), *International and National Prosecution of Crimes Under International Law*, Berlin 2001, 21-46.
- Kaul*, Inge/*Conceição*, Pedro/*Goulven*, Katell Le/*Mendoza*, Ronald U. (eds.), *Providing Global Public Goods – Managing Globalization*, New York/Oxford 2003.
- Kaul*, Inge/*Grunberg*, Isabelle/*Stern*, Marc A. (eds.), *Global Public Goods – International Cooperation in the 21st Century*, New York/Oxford 1999.
- Kell*, Georg/*Levin*, David M., The Global Compact Network: An Historic Experiment in Learning and Action, *Business and Society Review* 108 (2003), 151-181.
- Keohane*, Robert O./*Nye*, Joseph S., Transgovernmental Relations and International Organizations, *World Politics* 27 (1974), 39-62.
- Kingsbury*, Benedict, The Concept of Compliance as a Function of Competing Conceptions of International Law, *Michigan Journal of International Law* 19 (1998), 345-372.

- Kinley, David/Tadaki, Junko*, From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law, *Virginia Journal of International Law* 44 (2004), 931-1023.
- Klinkenberg, Michael*, Die Leitsätze der OECD für multinationale Unternehmen – ein Vorbild für die neue Welthandelsrunde?, *Zeitschrift für Vergleichende Rechtswissenschaft* 101 (2002), 421-433.
- Koenig-Archibugi, Mathias*, Mapping Global Governance, in: Held, David/McGrew, Anthony (eds.), *Governing Globalization – Power, Authority and Global Governance*, Cambridge/Oxford/Malden 2002, 46-69.
- Koh, Harold Hongju*, Separating Myth from Reality About Corporate Responsibility Litigation, *Journal of International Economic Law* 7 (2004), 263-274.
- Why Do Nations Obey International Law?, *Yale Law Journal* 106 (1997), 2599-2659.
- Kohona, Palitha T.B.*, The Role of Non-State Entities in the Making and Implementation of International Norms, *Journal of World Investment* 2 (2001), 537-578.
- Kokott, Juliane*, Die Staatsrechtslehre und die Veränderung ihres Gegenstandes: Konsequenzen von Europäisierung und Internationalisierung, *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer* 63 (2004), 7-40.
- Kotzur, Markus*, *Grenznachbarschaftliche Zusammenarbeit in Europa*, Berlin 2004.
- Krüger, Herbert*, *Allgemeine Staatslehre*, 2nd ed., Stuttgart/Berlin/Köln *et al.* 1966.
- Kunstle, David P.*, *Kadic v. Karadzic: Do Private Individuals have Enforceable Rights and Obligations under the Alien Tort Claims Act?*, *Duke Journal of Comparative and International Law* 6 (1996), 319-346.
- Ladeur, Karl-Heinz*, Globalization and Public Governance – A Contradiction?, in: Ladeur, Karl-Heinz (ed.), *Public Governance in the Age of Globalization*, Aldershot/Burlington 2004, 1-22.
- Lang, Winfried*, Compliance Control in International Environmental Law: Institutional Necessities, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 56 (1996), 685-695.
- Lauterpacht, Hersch*, *The Function of Law in the International Community*, Oxford 1933.
- Legum, Barton*, Trends and Challenges in Investor-State Arbitration, *Arbitration International* 19 (2003), 143-147.
- Lehmkuhl, Dirk*, Der lange Schatten staatlichen Rechts: Verrechtlichung im transnationalen Sport, in: Zangl, Bernhard/Zürn, Michael (eds.), *Verrechtlichung – Baustein für Global Governance?*, Bonn 2004, 179-197.
- Malanczuk, Peter*, Globalization and the Future Role of Sovereign States, in: Weiss, Friedl/Denters, Erik/Waart, Paul de (eds.), *International Economic Law with a Human Face*, The Hague/Dordrecht/London 1998, 45-65.
- Marauhn, Thilo*, Towards a Procedural Law of Compliance Control in International Environmental Relations, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 56 (1996), 696-731.
- Matthews, Duncan*, *Globalising Intellectual Property Rights – The TRIPs Agreement*, London/New York 2002.
- Maull, Hanns W.*, Globalisation, Politics and the State, in: Hoffmann, Bernd von (ed.), *Global Governance*, Frankfurt am Main/Berlin/Bern *et al.* 2004, 31-43.

- Mayne*, Ruth, Regulating TNCs: The Role of Voluntary and Governmental Approaches, in: Picciotto, Sol/Mayne, Ruth (eds.), *Regulating International Business*, Houndsmills/New York 1999, 235-254.
- Mefford*, Aron, *Lex Informatica*: Foundations of Law on the Internet, *Indiana Journal of Global Legal Studies* 5 (1997), 211-237.
- Mendelson*, Maurice, The Formation of Customary International Law, *Recueil des Cours* 272 (1998), 155-410.
- Messner*, Dirk/*Nuscheler*, Franz, Global Governance – Herausforderungen an der Schwelle zum 21. Jahrhundert, in: Senghaas, Dieter (ed.), *Frieden machen*, Frankfurt am Main 1997, 337-361.
- Mosler*, Hermann, International Legal Community, in: Bernhardt, Rudolf (ed.), *Encyclopedia of Public International Law*, Vol. II, Amsterdam/Lausanne/New York *et al.* 1995, 1251-1255.
- The International Society as a Legal Community, *Recueil des Cours* 140 (1974), 1-320.
- Muchlinski*, Peter, *Multinational Enterprises and the Law*, Oxford/Cambridge 1995.
- Müllerson*, Rein, *Ordering Anarchy – International Law in International Society*, The Hague/Boston/London 2000.
- Mürle*, Holger, Global Governance – Literaturbericht und Forschungsfragen, *INEF Report*, Heft 32, Duisburg 1998.
- Murphy*, John F., *The United States and the Rule of Law in International Affairs*, Cambridge 2004.
- Neuhold*, Hanspeter, The Foreign Policy “Cost-Benefit-Analysis” Revisited, *German Yearbook of International Law* 42 (1999), 84-124.
- Nolte*, Georg, The United States and the International Criminal Court, in: Malone, David M./Khong, Yuen Foong (eds.), *Unilateralism and U.S. Foreign Policy – International Perspectives*, Boulder 2003, 71-94.
- Nowrot*, Karsten, Neubestimmung des Einflusses der USA auf das Welthandelsrecht, in: Bungenberg, Marc/Meessen, Karl M. (eds.), *Internationales Wirtschaftsrecht im Schatten des 11. September 2001*, Stuttgart/München/Hannover *et al.* 2004, 49-73.
- Nun sag, wie hast du’s mit den Global Players? Fragen an die Völkerrechtsgemeinschaft zur internationalen Rechtsstellung transnationaler Unternehmen, *Die Friedens-Warte* 79 (2004), 119-150.
 - Die UN-Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights – Gelungener Beitrag zur transnationalen Rechtsverwirklichung oder das Ende des Global Compact?, Halle/Saale 2003.
 - Verfassungsrechtlicher Eigentumsschutz von Internet-Domains, Halle/Saale 2002.
 - Saving the International Legal Regime on Climate Change?: The 2001 Conferences of Bonn and Marrakesh, *German Yearbook of International Law* 44 (2001), 396-429.
 - Legal Consequences of Globalization: The Status of Non-Governmental Organizations under International Law, *Indiana Journal of Global Legal Studies* 6 (1999), 579-645.
- Nowrot*, Karsten/*Schabacker*, Emily W., The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone, *American University International Law Review* 14 (1998), 321-412.
- Nowrot*, Karsten/*Wardin*, Yvonne, Liberalisierung der Wasserversorgung in der WTO-Rechtsordnung – Die Verwirklichung des Menschenrechts auf Wasser als Aufgabe einer transnationalen Verantwortungsgemeinschaft, Halle/Saale 2003.

- Nunnenkamp*, Peter, Winners and Losers in the Global Economy: Recent Trends in the International Division of Labor, Major Implications and Critical Policy Challenges, German Yearbook of International Law 39 (1996), 42-81.
- Oellers-Frahm*, Karin, Multiplication of International Courts and Tribunals and Conflicting Jurisdiction – Problems and Possible Solutions, Max Planck Yearbook of United Nations Law 5 (2001), 67-104.
- Oeter*, Stefan, Chancen und Defizite internationaler Verrechtlichung: Was das Recht jenseits des Nationalstaates leisten kann, in: Zangl, Bernhard/Zürn, Michael (eds.), Verrechtlichung – Baustein für Global Governance?, Bonn 2004, 46-73.
- International Law and General Systems Theory, German Yearbook of International Law 44 (2001), 72-95.
- Okeke*, Chris N., Controversial Subjects of Contemporary International Law, Rotterdam 1974.
- Perez*, Antonio F., Who Killed Sovereignty? Or: Changing Norms Concerning Sovereignty in International Law, Wisconsin International Law Journal 14 (1996), 463-490.
- Pernthaler*, Peter, Die Globalisierung als Herausforderung an eine moderne Staatslehre, in: Schäffer, Heinz/Berka, Walter/Stolzlechner, Harald/Werndl, Josef (eds.), Staat-Verfassung-Verwaltung – Festschrift anlässlich des 65. Geburtstages von Friedrich Koja, Wien/New York 1998, 69-83.
- Peters*, Anne, Elemente einer Theorie der Verfassung Europas, Berlin 2001.
- Radbruch*, Gustav, Einführung in die Rechtswissenschaft, 11th ed., Stuttgart 1964.
- Randelzhofer*, Albrecht, Staatsgewalt und Souveränität, in: Isensee, Josef/Kirchhof, Paul (eds.), Handbuch des Staatsrechts der Bundesrepublik Deutschland, Vol. II, 3rd ed., Heidelberg 2004, 143-162.
- Raustiala*, Kal, The “Participatory Revolution“ in International Environmental Law, Harvard Environmental Law Review 21 (1997), 537-586.
- Reeve*, Rosalind, Policing International Trade in Endangered Species – The CITES Treaty and Compliance, London 2002.
- Reinisch*, August, Governance Without Accountability?, German Yearbook of International Law 44 (2001), 270-306.
- Reisman*, W. Michael, Learning to Deal with Rejection: The International Criminal Court and the United States, Journal of International Criminal Justice 2 (2004), 17-18.
- Designing and Managing the Future of the State, European Journal of International Law 8 (1997), 409-420.
- Richter*, Judith, Holding Corporations Accountable – Corporate Conduct, International Codes, and Citizen Action, London/New York 2001.
- Riedel*, Eibe H., International Environmental Law – A Law to Serve the Public Interest? – An Analysis of the Scope of the Binding Effect of Basic Principles (Public Interest Norms), in: Delbrück, Jost (ed.), New Trends in International Lawmaking – International ‘Legislation’ in the Public Interest, Berlin 1997, 61-98.
- Standards and Sources. Farewell to the Exclusivity of the Sources Triad in International Law?, European Journal of International Law 2 (1991), 58-84.
- Riedinger*, Sonja, Die Rolle nichtstaatlicher Organisationen bei der Entwicklung und Durchsetzung internationalen Umweltrechts, Berlin 2001.
- Rieth*, Lothar, Corporate Social Responsibility in Global Economic Governance: A Comparison of the OECD Guidelines and the UN Global Compact, in: Schirm, Stefan A. (ed.),

- New Rules for Global Markets – Public and Private Governance in the World Economy, Houndsmills/New York 2004, 177-192.
- Der VN Global Compact: Was als Experiment begann ..., *Die Friedens-Warte* 79 (2004), 151-170.
- Roberts*, Anthea E., Traditional and Modern Approaches to Customary International Law: A Reconciliation, *American Journal of International Law* 95 (2001), 757-791.
- Röben*, Volker, International Internet Governance, *German Yearbook of International Law* 42 (1999), 400-437.
- Roht-Arriaza*, Naomi, 'Soft Law' in a 'Hybrid' Organization: The International Organization for Standardization, in: Shelton, Dinah (ed.), *Commitment and Compliance – The Role of Non-Binding Norms in the International Legal System*, Oxford/New York 2000, 263-281.
- Rosenau*, James N., Governance in a New Global Order, in: Held, David/McGrew, Anthony (eds.), *Governing Globalization – Power, Authority and Global Governance*, Cambridge/Oxford/Malden 2002, 70-86.
- Rosenau*, James N./*Czempiel*, Ernst-Otto (eds.), *Governance Without Government: Order and Change in World Politics*, Cambridge/New York 1992.
- Rosenne*, Shabtai, The Perplexities of Modern International Law, *Recueil des Cours* 291 (2001), 9-471.
- Ruffert*, Matthias, *Die Globalisierung als Herausforderung an das Öffentliche Recht*, Stuttgart/München/Hannover *et al.* 2004.
- Ruggie*, John G., The Theory and Practice of Learning Networks – Corporate Social Responsibility and the Global Compact, *Journal of Corporate Citizenship* 2 (No. 5, 2002), 27-36.
- Ryan*, Michael P., *Knowledge Diplomacy – Global Competition and the Politics of Intellectual Property*, Washington, D.C. 1998.
- Sanders*, Pieter, Codes of conduct and sources of law, in: Fouchard, Philippe/Kahn, Philippe/Lyon-Caen, Antoine (eds.), *Le droit des relations économiques internationales – Études offertes à Berthold Goldman*, Paris 1982, 281-298.
- Sassen*, Saskia, The State and Economic Globalization: Any Implications for International Law?, *Chicago Journal of International Law* 1 (2000), 109-116.
- Schachter*, Oscar, The Decline of the Nation-State and its Implications for International Law, *Columbia Journal of Transnational Law* 36 (1997), 7-23.
- Sovereignty – Then and Now, in: MacDonald, Ronald St. John (ed.), *Essays in Honour of Wang Tieya*, Dordrecht/Boston/London 1994, 671-688.
- Schermers*, Henry G./*Blokker*, Niels M., *International Institutional Law*, 4th ed., Boston/Leiden 2003.
- Schreuer*, Christoph, The Waning of the Sovereign State: Towards a New Paradigm for International Law?, *European Journal of International Law* 4 (1993), 447-471.
- Schuppert*, Gunnar Folke, *Staatswissenschaft*, Baden-Baden 2003.
- Schwartz*, Eric P., The United States and the International Criminal Court: The Case for "Dexterous Multilateralism", *Chicago Journal of International Law* 4 (2003), 223-235.
- Saita*, Alex Y., Globalization and the Convergence of Values, *Cornell International Law Journal* 30 (1997), 429-491.
- Sell*, Susan K., *Private Power, Public Law – The Globalization of Intellectual Property Rights*, Cambridge 2003.

- Shaw*, Malcolm N., *International Law*, 5th ed., Cambridge 2003.
- Shelton*, Dinah, *International Law and 'Relative Normativity'*, in: Evans, Malcolm D. (ed.), *International Law*, Oxford/New York 2003, 145-172.
- Sikkink*, Kathryn, *Codes of Conduct for Transnational Corporations: The Case of the WHO/UNICEF Code*, *International Organization* 40 (1986), 815-840.
- Simma*, Bruno, *From Bilateralism to Community Interest in International Law*, *Recueil des Cours* 250 (1994), 217-384.
- Slaughter*, Anne-Marie, *A New World Order*, Princeton/Oxford 2004.
- *International Law and International Relations*, *Recueil des Cours* 285 (2000), 9-249.
- Smith*, Bradford L., *The Third Industrial Revolution: Law and Policy for the Internet*, *Recueil des Cours* 288 (2000), 229-464.
- Smith*, Dimitry Kingsford, *Networks, Norms and the Nation State: Thoughts on Pluralism and Globalized Securities Regulation*, in: Dauvergne, Catherine (ed.), *Jurisprudence for an Interconnected Globe*, Aldershot/Burlington 2003, 93-126.
- Steffek*, Jens, *Sources of Legitimacy Beyond the State: A View from International Relations*, in: Joerges, Christian/Sand, Inger-Johanne/Teubner, Gunther (eds.), *Transnational Governance and Constitutionalism*, Oxford/Portland 2004, 81-101.
- Stein*, Torsten, *Decentralized International Law Enforcement: The Changing Role of the State as Law Enforcement Agent*, in: Delbrück, Jost (ed.), *Allocation of Law Enforcement Authority in the International System*, Berlin 1995, 107-126.
- Strömer*, Tobias H., *Das ICANN-Schiedsverfahren – Königsweg bei Domeinstreitigkeiten*, *Kommunikation & Recht* 2000, 587-594.
- Suter*, Keith, *Global Order and Global Disorder – Globalization and the Nation-State*, Westport 2003.
- Suy*, Eric, *New Players in International Relations*, in: Kreijen, Gerard (ed.), *State, Sovereignty, and International Governance*, Oxford/New York/Auckland *et al.* 2002, 373-386.
- Tan*, Chet J., Jr., *The Proliferation of Bilateral Non-Surrender Agreements Among Non-Ratifiers of the Rome Statute of the International Criminal Court*, *American University International Law Review* 19 (2004), 1115-1180.
- Teixeira*, Pedro Gustavo, *Public Governance and Co-operative Law of Transnational Markets: The Case of Financial Regulation*, in: Ladeur, Karl-Heinz (ed.), *Public Governance in the Age of Globalization*, Aldershot/Burlington 2004, 305-335.
- Teubner*, Gunther, *Societal Constitutionalism: Alternatives to State-Centred Constitutional Theory*, in: Joerges, Christian/Sand, Inger-Johanne/Teubner, Gunther (eds.), *Transnational Governance and Constitutionalism*, Oxford/Portland 2004, 3-28.
- *Globale Zivilverfassungen: Alternativen zur staatszentrierten Verfassungstheorie*, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 63 (2003), 1-28.
- *'Global Bukowina': Legal Pluralism in the World Society*, in: Teubner, Gunther (ed.), *Global Law Without a State*, Aldershot/Brookfield/Singapur *et al.* 1997, 3-28.
- Thürer*, Daniel, *Modernes Völkerrecht: Ein System im Wandel und Wachstum – Gerechtigkeitsgedanke als Kraft der Veränderung?*, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 60 (2000), 557-604.
- *The Emergence of Non-Governmental Organizations and Transnational Enterprises in International Law and the Changing Role of the State*, in: Hofmann, Rainer (ed.), *Non-*

- State Actors as New Subjects of International Law: International Law – From the Traditional State Order Towards the Law of the Global Community, Berlin 1999, 37-58.
- Völkerrecht und Landesrecht – Thesen zu einer theoretischen Problemumschreibung, Schweizerische Zeitschrift für Internationales und Europäisches Recht 9 (1999), 217-224.
- Tietje*, Christian, Grundzüge und rechtliche Probleme der internationalen Informationsordnung, in: Hans-Bredow-Institut für Medienforschung an der Universität Hamburg (ed.), Internationales Handbuch Medien 2004/2005, Baden-Baden 2004, 15-39.
- Grundstrukturen und aktuelle Entwicklungen des Rechts der Beilegung internationaler Investitionsstreitigkeiten, Halle/Saale 2003.
 - Recht ohne Rechtsquellen? Entstehung und Wandel von Völkerrechtsnormen im Interesse des Schutzes globaler Rechtsgüter im Spannungsverhältnis von Rechtssicherheit und Rechtsdynamik, Zeitschrift für Rechtssoziologie 24 (2003), 27-42.
 - Die Staatsrechtslehre und die Veränderung ihres Gegenstandes: Konsequenzen von Europäisierung und Internationalisierung, Deutsches Verwaltungsblatt 118 (2003), 1081-1096.
 - The Duty to Cooperate in International Economic Law and Related Areas, in: Delbrück, Jost (ed.), International Law of Cooperation and State Sovereignty, Berlin 2002, 45-65.
 - Global Governance and Inter-Agency Co-operation in International Economic Law, Journal of World Trade 36 (2002), 501-515.
 - Transnationales Wirtschaftsrecht aus öffentlich-rechtlicher Perspektive, Zeitschrift für Vergleichende Rechtswissenschaft 101 (2002), 404-420.
 - Internationalisiertes Verwaltungshandeln, Berlin 2001.
 - The Changing Legal Structure of International Treaties as an Aspect of an Emerging Global Governance Architecture, German Yearbook of International Law 42 (1999), 26-55.
 - Normative Grundstrukturen der Behandlung nichttarifärer Handelshemmnisse in der WTO/GATT-Rechtsordnung, Berlin 1998.
- Tietje*, Christian/*Nowrot*, Karsten, Forming the Centre of a Transnational Economic Legal Order? Thoughts on the Current and Future Position of Non-State Actors in WTO Law, European Business Organization Law Review 5 (2004), 321-351.
- Völkerrechtliche Aspekte militärischer Maßnahmen gegen den internationalen Terrorismus, Neue Zeitschrift für Wehrrecht 44 (2002), 1-18.
- Tita*, Alberto, Globalization: A New Political and Economic Space Requiring Supranational Governance, Journal of World Trade 32 (No. 3, 1998), 47-55.
- Tomuschat*, Christian, Human Rights – Between Idealism and Realism, Oxford/New York 2003.
- International Law: Ensuring the Survival of Mankind on the Eve of a New Century, Recueil des Cours 281 (1999), 9-438.
 - The Concluding Documents of World Order Conferences, in: Makarczyk, Jerzy (ed.), Theory of International Law at the Threshold of the 21st Century – Essays in Honour of Krzysztof Skubiszewski, The Hague/London/Boston 1996, 563-585.
 - Obligations Arising for States Without or Against their Will, Recueil des Cours 241 (1993), 195-374.
- Toope*, Stephen J., Mixed International Arbitration – Studies in Arbitration between States and Private Persons, Cambridge 1990.

- Tully*, Stephen, The 2000 Review of the OECD Guidelines for Multinational Enterprises, *International and Comparative Law Quarterly* 50 (2001), 394-404.
- Vagts*, Detlev F., The UN Norms for Transnational Corporations, *Leiden Journal of International Law* 16 (2003), 795-802.
- Multinational Corporations and International Guidelines, *Common Market Law Review* 18 (1981), 463-474.
- Vedder*, Christoph, The International Olympic Committee: An Advanced Non-Governmental Organization and the International Law, *German Yearbook of International Law* 27 (1984), 233-258.
- Verdross*, Alfred/*Simma*, Bruno, *Universelles Völkerrecht*, 3rd ed., Berlin 1984.
- Vesting*, Thomas, The Network Economy as a Challenge to Create New Public Law (beyond the State), in: Ladeur, Karl-Heinz (ed.), *Public Governance in the Age of Globalization*, Aldershot/Burlington 2004, 247-287.
- Vitzthum*, Wolfgang Graf, Begriff, Geschichte und Quellen des Völkerrechts, in: Vitzthum, Wolfgang Graf (ed.), *Völkerrecht*, 2nd ed., Berlin/New York 2001, 1-85.
- Vogelaar*, Th., Multinational Corporations and International Law, *Netherlands International Law Review* 27 (1980), 69-78.
- Wahl*, Rainer, Internationalisierung des Staates, in: Bohnert, Joachim/Gramm, Christof/Kindhäuser, Urs/Legel, Joachim/Rinken, Alfred/Robbers, Gerhard (eds.), *Verfassung-Philosophie-Kirche – Festschrift für Alexander Hollerbach zum 70. Geburtstag*, Berlin 2001, 193-222.
- Wallace*, Cynthia D., The Multinational Enterprise and Legal Control – Host State Sovereignty in an Era of Economic Globalization, The Hague/London/New York 2002.
- Walter*, Christian/*Vöneky*, Silja/*Röben*, Volker/*Schorkopf*, Frank (eds.), *Terrorism as a Challenge for National and International Law: Security versus Liberty?*, Berlin/Heidelberg/New York *et al.* 2004.
- Watts*, Sir Arthur, The Importance of International Law, in: Byers, Michael (ed.), *The Role of Law in International Politics – Essays in International Relations and International Law*, Oxford/New York 2000, 5-16.
- The International Rule of Law, *German Yearbook of International Law* 36 (1993), 15-45.
- Webley*, Simon, The Nature and Value of Internal Codes of Ethics, in: Addo, Michael K. (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, The Hague/London/Boston 1999, 107-113.
- Weenink*, Anton, The Russian Mafiya: A Private Actor in International Relations?, in: Arts, Bas/Noortmann, Math/Reinalda, Bob (eds.), *Non-State Actors in International Relations*, Aldershot/Burlington/Singapore *et al.* 2001, 279-296.
- Weil*, Prosper, The State, the Foreign Investor, and International Law: The no longer Stormy Relationship of a *Ménage à Trois*, in: Schlemmer-Schulte, Sabine/Tung, Ko-Yung (eds.), *Liber Amicorum Ibrahim F.I. Shihata – International Finance and Development Law*, The Hague/London/Boston *et al.* 2001, 839-856.
- Weissbrodt*, David/*Kruger*, Muria, Business and Human Rights, in: Bergsmo, Morten (ed.), *Human Rights and Criminal Justice for the Downtrodden – Essays in Honour of Asbjørn Eide*, Leiden/Boston 2003, 421-449.

- Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, *American Journal of International Law* 97 (2003), 901-922.
- Wolf*, Klaus Dieter/*Take*, Ingo/*Brozus*, Lars, *Global Governance – Eine Antwort auf das Demokratiedefizit des internationalen Regierens?*, in: Albert, Mathias/Moltmann, Bernhard/Schoch, Bruno (eds.), *Die Entgrenzung der Politik: Internationale Beziehungen und Friedensforschung – Festschrift für Lothar Brock*, Frankfurt am Main/New York 2004, 140-161.
- Wolfrum*, Rüdiger, Means of Ensuring Compliance with and Enforcement of International Environmental Law, *Recueil des Cours* 272 (1998), 9-154.
- Woods*, Ngairé, Global Governance and the Role of Institutions, in: Held, David/McGrew, Anthony (eds.), *Governing Globalization – Power, Authority and Global Governance*, Cambridge/Oxford/Malden 2002, 25-45.
- World Health Organization*, *International Code of the Marketing of Breast-milk Substitutes*, Geneva 1981.
- Zacher*, Mark W., The Decaying Pillars of the Westphalian Temple: Implications for International Order and Governance, in: Rosenau, James N./Czempiel, Ernst-Otto (eds.), *Governance Without Government: Order and Change in World Politics*, Cambridge 1992, 58-101.
- Zangl*, Bernhard/*Zürn*, Michael, Make Law, Not War: Internationale und transnationale Verrechtlichung als Baustein für Global Governance, in: Zangl, Bernhard/*Zürn*, Michael (eds.), *Verrechtlichung – Baustein für Global Governance?*, Bonn 2004, 12-45.
- Zaring*, David, International Law by Other Means: The Twilight Existence of International Financial Regulatory Organizations, *Texas International Law Journal* 33 (1998), 281-330.
- Zemanek*, Karl, Is the Term “Soft Law” Convenient?, in: Hafner, Gerhard/Loibl, Gerhard/Rest, Alfred/Sucharipa-Behrmann, Lilly/Zemanek, Karl (eds.), *Liber Amicorum Professor Ignaz Seidl-Hohenveldern in Honour of his 80th Birthday*, The Hague/London/Boston 1998, 843-862.
- The Legal Foundations of the International System, *Recueil des Cours* 266 (1997), 9-336.
- Zürn*, Michael, Sovereignty and Law in a Denationalised World, in: Appelbaum, Richard P./Felstinger, William L.F./Gessner, Volkmar (eds.), *Rules and Networks – The Legal Culture of Global Business Transactions*, Oxford/Portland 2001, 39-71.

Beiträge zum Transnationalen Wirtschaftsrecht
(bis Heft 13 erschienen unter dem Titel: Arbeitspapiere aus dem
Institut für Wirtschaftsrecht – ISSN 1619-5388)

ISSN 1612-1368

Bislang erschienene Hefte

- Heft 1 Wiebe-Katrin Boie, Der Handel mit Emissionsrechten in der EG/EU – Neue Rechtssetzungsinitiative der EG-Kommission, März 2002, ISBN 3-86010-639-2
- Heft 2 Susanne Rudisch, Die institutionelle Struktur der Welthandelsorganisation (WTO): Reformüberlegungen, April 2002, ISBN 3-86010-646-5
- Heft 3 Jost Delbrück, Das Staatsbild im Zeitalter wirtschaftsrechtlicher Globalisierung, Juli 2002, ISBN 3-86010-654-6
- Heft 4 Christian Tietje, Die historische Entwicklung der rechtlichen Disziplinierung technischer Handelshemmnisse im GATT 1947 und in der WTO-Rechtsordnung, August 2002, ISBN 3-86010-655-4
- Heft 5 Ludwig Gramlich, Das französische Asbestverbot vor der WTO, August 2002, ISBN 3-86010-653-8
- Heft 6 Sebastian Wolf, Regulative Maßnahmen zum Schutz vor gentechnisch veränderten Organismen und Welthandelsrecht, September 2002, ISBN 3-86010-658-9
- Heft 7 Bernhard Kluttig/Karsten Nowrot, Der „Bipartisan Trade Promotion Authority Act of 2002“ – Implikationen für die Doha-Runde der WTO, September 2002, ISBN 3-86010-659-7
- Heft 8 Karsten Nowrot, Verfassungsrechtlicher Eigentumsschutz von Internet-Domains, Oktober 2002, ISBN 3-86010-664-3
- Heft 9 Martin Winkler, Der Treibhausgas-Emissionsrechtehandel im Umweltvölkerrecht, November 2002, ISBN 3-86010-665-1
- Heft 10 Christian Tietje, Grundstrukturen und aktuelle Entwicklungen des Rechts der Beilegung internationaler Investitionsstreitigkeiten, Januar 2003, ISBN 3-86010-671-6
- Heft 11 Gerhard Kraft/Manfred Jäger/Anja Dreiling, Abwehrmaßnahmen gegen feindliche Übernahmen im Spiegel rechtspolitischer Diskussion und ökonomischer Sinnhaftigkeit, Februar 2003, ISBN 3-86010-647-0
- Heft 12 Bernhard Kluttig, Welthandelsrecht und Umweltschutz – Kohärenz statt Konkurrenz, März 2003, ISBN 3-86010-680-5

- Heft 13 Gerhard Kraft, Das Corporate Governance-Leitbild des deutschen Unternehmenssteuerrechts: Bestandsaufnahme – Kritik – Reformbedarf, April 2003, ISBN 3-86010-682-1
- Heft 14 Karsten Nowrot/Yvonne Wardin, Liberalisierung der Wasserversorgung in der WTO-Rechtsordnung – Die Verwirklichung des Menschenrechts auf Wasser als Aufgabe einer transnationalen Verantwortungsgemeinschaft, Juni 2003, ISBN 3-86010-686-4
- Heft 15 Alexander Böhmer/Guido Glania, The Doha Development Round: Reintegrating Business Interests into the Agenda – WTO Negotiations from a German Industry Perspective, Juni 2003, ISBN 3-86010-687-2
- Heft 16 Dieter Schneider, „Freimütige, lustige und ernsthafte, jedoch vernunft- und gesetzmäßige Gedanken“ (Thomasius) über die Entwicklung der Lehre vom gerechten Preis und fair value, Juli 2003, ISBN 3-86010-696-1
- Heft 17 Andy Ruzik, Die Anwendung von Europarecht durch Schiedsgerichte, August 2003, ISBN 3-86010-697-X
- Heft 18 Michael Slonina, Gesundheitsschutz contra geistiges Eigentum? Aktuelle Probleme des TRIPS-Übereinkommens, August 2003, ISBN 3-86010-698-8
- Heft 19 Lorenz Schomerus, Die Uruguay-Runde: Erfahrungen eines Chef-Unterhändlers, September 2003, ISBN 3-86010-704-6
- Heft 20 Michael Slonina, Durchbruch im Spannungsverhältnis TRIPS and Health: Die WTO-Entscheidung zu Exporten unter Zwangslizenzen, September 2003, ISBN 3-86010-705-4
- Heft 21 Karsten Nowrot, Die UN-Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights – Gelungener Beitrag zur transnationalen Rechtsverwirklichung oder das Ende des Global Compact?, September 2003, ISBN 3-86010-706-2
- Heft 22 Gerhard Kraft/Ronald Krenzel, Economic Analysis of Tax Law – Current and Past Research Investigated from a German Tax Perspective, Oktober 2003, ISBN 3-86010-715-1
- Heft 23 Ingeborg Fogt Bergby, Grundlagen und aktuelle Entwicklungen im Streitbeilegungsrecht nach dem Energiechartavertrag aus norwegischer Perspektive, November 2003, ISBN 3-86010-719-4
- Heft 24 Lilian Habermann/Holger Pietzsch, Individualrechtsschutz im EG-Antidumpingrecht: Grundlagen und aktuelle Entwicklungen, Februar 2004, ISBN 3-86010-722-4
- Heft 25 Matthias Hornberg, Corporate Governance: The Combined Code 1998 as a Standard for Directors' Duties, März 2004, ISBN 3-86010-724-0

- Heft 26 Christian Tietje, Current Developments under the WTO Agreement on Subsidies and Countervailing Measures as an Example for the Functional Unity of Domestic and International Trade Law, März 2004, ISBN 3-86010-726-7
- Heft 27 Henning Jessen, Zollpräferenzen für Entwicklungsländer: WTO-rechtliche Anforderungen an Selektivität und Konditionalität – Die GSP-Entscheidung des WTO Panel und Appellate Body, Mai 2004, ISBN 3-86010-730-5
- Heft 28 Tillmann Rudolf Braun, Investment Protection under WTO Law – New Developments in the Aftermath of Cancún, Mai 2004, ISBN 3-86010-731-3
- Heft 29 Juliane Thieme, Latente Steuern – Der Einfluss internationaler Bilanzierungsvorschriften auf die Rechnungslegung in Deutschland, Juni 2004, ISBN 3-86010-733-X
- Heft 30 Bernhard Kluttig, Die Klagebefugnis Privater gegen EU-Rechtsakte in der Rechtsprechung des Europäischen Gerichtshofes: Und die Hoffnung stirbt zuletzt..., September 2004, ISBN 3-86010-746-1
- Heft 31 Ulrich Immenga, Internationales Wettbewerbsrecht: Unilateralismus, Bilateralismus, Multilateralismus, Oktober 2004, ISBN 3-86010-748-8
- Heft 32 Horst G. Krenzler, Die Uruguay Runde aus Sicht der Europäischen Union, Oktober 2004, ISBN 3-86010-749-6
- Heft 33 Karsten Nowrot, Global Governance and International Law, November 2004, ISBN 3-86010-750-X