

Teil I

Allgemeines Völkerrecht

§ 5 Die völkerrechtliche Verantwortlichkeit

A. Grundlagen der völkerrechtlichen Verantwortlichkeit

Vertiefende Literatur zu A.: *A. v. Arnould/S. Buszewski*, Modes of Legal Accountability: The Srebrenica Example, FW 88/3-4 (2013), 15; *A. S. Barros/C. Ryngaert/J. Wouters* (Hg.), International Organizations and Member State Responsibility, 2016; *S. Besson* (Hg.), International Responsibility: Essays in Law, History and Philosophy, 2017; *E. Brown Weiss*, Invoking State Responsibility in the Twenty-first Century, AJIL 96 (2002), 798; *J. Brunnée*, International Legal Accountability Through the Lens of the Law of State Responsibility, NYIL 36 (2007), 21; *D. Caron*, The ILC Articles on State Responsibility: The Paradoxical Relationship Between Form and Authority, AJIL 96 (2002), 857; *C. Chinkin* (Hg.), Sovereignty, Statehood and State Responsibility: FS Crawford, 2015; *O. Corten*, La Commission du droit international comme agent de formalisation du droit de la responsabilité, FS Dupuy, 2014, 399; *J. Crawford*, State Responsibility: The General Part, 2013; *K. Creutz*, State Responsibility in the International Legal Order: A Critical Appraisal, 2020; *W. Czapliński*, UN Codification of Law of State Responsibility, AVR 41 (2003), 62; *ders.*, International Responsibility of International Organisations: An Outline, PolYIL 27 (2004/05), 49; *K. Daugirdas*, Reputation and the Responsibility of International Organizations, EJIL 25 (2014), 991; *H. Decoeur*, Confronting the Shadow State: An International Law Perspective on State Organized Crime, 2018; *O. Dörr*, Völkerrechtliche Deliktsansprüche Privater – auf der Grundlage und in den Grenzen einer völkerrechtlichen Schutznormlehre, FS E. Klein, 2013, 765; *A. Fischer-Lescano*, Subjektivierung völkerrechtlicher Sekundärregeln: Die Individualrechte auf Entschädigung und effektiven Rechtsschutz bei Verletzungen des Völkerrechts, AVR 45 (2007), 299; *M. Fitzmaurice/D. Sarooshi* (Hg.), Issues of State Responsibility before International Judicial Institutions, 2004; *M. Forteau*, Régime général de responsabilité ou *lex specialis*?, RBDI 46 (2013), 147; *G. Gaja*, Primary and Secondary Rules in the International Law on State Responsibility, RivDI 97 (2014), 981; *T. Giegerich*, Verantwortlichkeit und Haftung für Akte internationaler und supranationaler Organisationen, ZVglRwiss 104 (2005), 163; *K. Ginther*, Verantwortlichkeit, Haftung und Verantwortung im Völkerrecht, FS Zemanek 1994, 335; *R. Hamilton*, State-Enabled Crimes, YJIL 41 (2016), 301; *P. J. Kuijper*, Attribution – Responsibility – Remedy: Some comments on the EU in different international regimes, RBDI 46 (2013), 57; *U. Linderfalk*, State Responsibility and the Primary-Secondary Rules Terminology: The Role of Language for an Understanding of the International Legal System, NorJIL 78 (2009), 53; *M. Möldner*, Accountability of International Organizations and Transnational Corporations: A Comparative Analysis, 2019; *A. Nissel*, The Duality of State Responsibility, ColHRLR 44 (2013), 793; *A. Nollkaemper*, Concurrence between Individual Responsibility and State Responsibility in International Law, ICLQ 53 (2003), 615; *ders./I. Plakokefalos* (Hg.), Principles of Shared Responsibility in International Law, 2014; *ders./D. Jacobs* (Hg.), Distribution of Responsibilities in International Law, 2015; *B. Patel*, Responsibility of International Organisations Towards Other International Organisations, 2013; *P. Pazartzis/P. Merkouris* (Hg.), Permutations of Responsibility in International Law, 2019; *V.-J. Proulx*, Institutionalizing State Responsibility, 2016; *M. Ragazzi* (Hg.), The Responsibility of International Organizations, 2013; *V. Richard*, Les organisations internationales entre *responsibility* et *accountability*: le régime de responsabilité esquissé par la CDI est-il adapté aux organisations internationales?, RBDI 46 (2013), 190; *S. Rosenne*, State Responsibility – *Festina Lente*, BYIL 75 (2004), 363; *R. Rosenstock*, The ILC and State Responsibility, AJIL 96 (2002), 792; *D. Sarooshi* (Hg.), Remedies and Responsibility for the Actions of International Organizations, 2014; *C. Tams*, All's Well that Ends

Well: Comments on the ILC's Articles on State Responsibility, ZaöRV 62 (2002), 759; C. Thiele, Das Verhältnis zwischen Staatenverantwortlichkeit und Menschenrechten, AVR 49 (2011), 343.

B. Das völkerrechtliche Delikt: Überblick

Vertiefende Literatur zu B.: H. Aust, Complicity and the Law of State Responsibility, 2011; ders., Complicity in Violations of International Humanitarian Law, in: Krieger (Hg.), Inducing Compliance with International Humanitarian Law, 2015, 442; J. Fry, Coercion, Causation, and the Fictional Elements of Indirect State Responsibility, VJTL 40 (2006/07), 611; A. Gattini, Smoking/No Smoking: Some Remarks on the Current Place of Fault in the ILC Draft Articles on State Responsibility, EJIL 10 (1999), 397; M. Hakimi, State Bystander Responsibility, EJIL 21 (2010), 341; R. Harndt, Völkerrechtliche Haftung für die schädlichen Folgen nicht verbotenen Verhaltens, 1993; M. Jackson, Complicity in International Law, 2015; V. Lanovoy, Complicity, MPEPIL (12/2015); ders., Complicity and its Limits in the Law of International Responsibility, 2016; E. Martin, The Application of the Doctrine of Intertemporality in Contentious Proceedings, 2021; I. v. Münch, Das völkerrechtliche Delikt in der Entwicklung der modernen Völkerrechtsgemeinschaft, 1963; G. Nolte/H. P. Aust, Equivocal Helpers – Complicit States, Mixed Messages and International Law, ICLQ 58 (2009), 1; S. Talmon, The Responsibility of Outside Powers for Acts of Secessionists, ICLQ 58 (2009), 493; A. Tanzi, Liability for Lawful Acts, MPEPIL (1/2021); W. Werner, Responding to the Undesired: State Responsibility, Risk Management and Precaution, NYIL 36 (2005), 57.

C. Das völkerrechtliche Delikt: Einzelfragen

Vertiefende Literatur zu C.: Zu I.1. (ohne Verhältnis IO/Mitgliedstaaten). S. Besson, La pluralité d'Etats responsables: vers une solidarité internationale?, SZIER 17 (2007), 13; I. Brownlie, State Responsibility: The Problem of Delegation, FS Zemanek 1994, 299; G. Di Stefano/A. Hêche, L'organe *de facto* dans la responsabilité internationale: Curia quo vadis?, AFDI 61 (2015), 3; J. Griebel, Die Zurechnungskategorien der *de facto*-Organe im Recht der Staatenverantwortlichkeit, 2004; M. den Heijer, Shared Responsibility before the European Court of Human Rights, NILR 60 (2013), 411; E. Henn, Staatenverantwortlichkeit für Verletzungen des Humanitären Völkerrechts durch private Militär- und Sicherheitsfirmen, Jura 2011, 572; J. A. Hessbruegge, The Historical Development of the Doctrines of Attribution and Due Diligence in International Law, NY-UJILP 36 (2004), 265; P. Jacob, Les définitions des notions d'«organe» et d'«agent» retenues par la CDI sont-elles opérationnelles?, RBDI 46 (2013), 17; M. G. Janaby, The Legal Regime Applicable to Private Military and Security Company Personnel in Armed Conflicts, 2016; C. Kreß, L'organe *de facto* en droit international public, RGDIP 105 (2001), 93; F. Kriener/V. Schmidt, Privatisierte Demokratieförderung – Die völkerrechtliche Zurechnung halbstaatlicher Demokratieförderer am Beispiel der deutschen politischen Stiftungen und des National Endowment for Democracy, AVR 59 (2021), 439; A. Nollkaemper/D. Jacobs, Shared Responsibility in International Law, MichJIL 34 (2013), 359; K. Odendahl, Die Bindung privater Militär- und Sicherheitsfirmen an das humanitäre Völkerrecht unter besonderer Berücksichtigung des Dokuments von Montreux, AVR 48 (2010), 226; P. Palchetti, De Facto Organs of a State, MPEPIL (7/2017); S.-H. Schulze, Cyber-,War“: Testfall der Staatenverantwortlichkeit, 2015; C. de Stefano, Attribution in International Law and Arbitration, 2020; G. Townsend, State Responsibility for Acts of *De Facto* Agents, ArizonaJIL 14 (1997); H. Torroja (Hg.), Public International Law and Human Rights Violations by Private Military and Security Companies, 2017.

Verhältnis IO/Mitgliedstaaten. R. Abraham, Eine gerichtsförmige Rechtsschutzmöglichkeit bei der Verletzung von Menschenrechten durch Streitkräfte in friedenssichernden Militäreinsätzen, 2021; C. Ahlborn, To Share or Not to Share? The Allocation of Responsibility between Internatio-

nal Organizations and their Member States, FW 88/3-4 (2013), 45; *P. d'Argent*, State organs placed at the disposal of the UN, effective control, wrongful abstention and dual attribution of conduct, QIL, Zoom-in 1 (2014), 17; *A. v. Arnould*, Rechtsbindungen im Auslandseinsatz, JBÖS 2010/11, Teilbd. 2, 77; *ders./S. Buszewski*, Modes of Legal Accountability, FW 88/3-4 (2013), 15; *J. d'Aspremont*, International Responsibility and the Constitution of Power, IOLR 12 (2015), 382; *C. Bell*, Reassessing Multiple Attribution: The International Law Commission and the Behrami and Saramati Decision, NYUJILP 42 (2010), 501; *N. Blokker*, Member State Responsibility for Wrongdoings of International Organizations, IOLR 12 (2015), 319; *C. Brölmann*, Member States and International Legal Responsibility, IOLR 12 (2015), 358; *L. Condorelli*, De la responsabilité internationale de l'ONU et/ou de l'État d'envoi lors d'actions de Forces de Maintien de la Paix, QIL, Zoom-in 1 (2014), 3; *I. Couzigou*, International Organisations and States within an Agency Relationship: The Distribution of Responsibility, NILR 61 (2014), 335; *T. Dannenbaum*, Translating the Standard of Effective Control into a System of Effective Accountability, HarvILJ 51 (2010), 113; *ders.*, Killings at Srebrenica, Effective Control, and the Power to Prevent Unlawful Conduct, ICLQ 61 (2012), 713; *ders.*, Dual attribution in the context of military operations, IOLR 12 (2015), 401; *B. Kondoch/M. Zwanenburg*, International Responsibility and Military Operations, in: Gill/Fleck (Hg.), The Handbook of the International Law of Military Operations, 2. Aufl. 2015, 559; *H. Krieger*, Die Verantwortlichkeit Deutschlands nach der EMRK für seine Streitkräfte im Auslandseinsatz, ZaöRV 62 (2002), 669; *C. Leck*, International Responsibility in United Nations Peacekeeping Operations: Command and Control Arrangements and the Attribution of Conduct, MelbJIL 10 2009, 346; *G. Le Moli*, Autonomy and Accountability of the UN in Peacekeeping Operations: The Case of the Central African Republic, MPYUNL 20 (2017), 213; *G. Marhic*, Le régime de responsabilité des opérations de paix de l'Union européenne: quelles règles applicables?, RBDI 46 (2013), 117; *K. Mujezinović Larsen*, Attribution of Conduct in Peace Operations: The 'Ultimate Authority and Control' Test, EJIL 19 (2009), 509; *N. Nedeski*, Shared Obligations and the Responsibility of an International Organizations and its Member States, IOLR 18 (2021), 139; *dies.*, Shared Obligations in International Law, 2022; *M. Odello/F. Seatzu* (Hg.), Armed Forces and International Jurisdictions, 2013; *E. Paasivirta*, The Responsibility of Member States of International Organizations?, IOLR 12 (2015), 448; *P. Palchetti*, The allocation of responsibility for internationally wrongful acts committed in the course of multinational operations, IRRC 95 (2013), 727; *ders.*, Les autorités provisoires de gouvernement (PISG) du Kosovo, EULEX et ONU: les principes d'attribution à l'épreuve, RBDI 46 (2013), 45; *ders.*, Litigating Member State Responsibility, IOLR 12 (2015), 468; *N. Perova*, Disentangling 'Effective Control' Test for the Purpose of Attribution of the Conduct of UN Peacekeepers to the States and the United Nations, NorJIL 86 (2017), 30; *A. Peters*, Die Anwendbarkeit der EMRK in Zeiten komplexer Hoheitsgewalt und das Prinzip der Grundrechtstoleranz, AVR 48 (2010), 1; *C. D. Putranto*, Responsibility of the United Nations under International Law: A Study over United Nations Peacekeeping Missions, 2011; *C. Ryngeart*, The Responsibility of Member States of International Organizations, IOLR 12 (2015), 502; *J.-P. Schütze*, Die Zurechenbarkeit von Völkerrechtsverstößen im Rahmen mandatiertes Friedensmissionen der Vereinten Nationen, 2011; *N. Tsagourias*, The Responsibility of International Organisations for Military Missions, in: Odello/Piotrowicz (Hg.), International Military Missions and International Law, 2011, 245; *A. Tzanakopoulos*, Sharing Responsibility for UN Targeted Sanctions, IOLR 12 (2015), 427; *J. Wouters* u. a. (Hg.), Accountability for Human Rights Violations by International Organisations, 2010.

Zu I.2. und I.3. *J. d'Aspremont*, Rebellion and State Responsibility: Wrongdoing by Democratically Elected Insurgents, ICLQ 58 (2009), 427; *ders.* u. a., Sharing Responsibility Between Non-State Actors and States in International Law, NILR 62 (2015), 49; *R. Barnidge*, The Due Diligence Principle Under International Law, IntCommLR 8 (2006), 81; *ders.*, Non-State Actors and Terrorism: Applying the Law of State Responsibility and the Due Diligence Principle, 2008; *L. Clarke*, Public-Private Partnerships and Responsibility under International Law, 2014; *S. Darcy*, Assistance, direction and control, IRRC 96 (2014), 243; *T. Demaria*, Réflexions sur les obligations de prévention et de diligence requise en droit de la responsabilité internationale, AFDI 65 (2019), 51; *P. Dumberry*, New State Responsibility for Internationally Wrongful Acts by an Insurrectional

Movement, EJIL 17 (2006), 605; A. Epiney, Die völkerrechtliche Verantwortlichkeit von Staaten für rechtswidriges Verhalten im Zusammenhang mit dem Verhalten Privater, 1992; *dies.*, Zur völkerrechtlichen Verantwortlichkeit im Zusammenhang mit dem Verhalten privater Sicherheitsfirmen, SZIER 17 (2007), 215; T. Hadden, Armed Groups and Emergent States: Legal and Pragmatic Approaches to Filling the Gaps in International Law, HYIL 32 (2019), 209; L. Íñigo Álvarez, The Obligation to Provide Reparations by Armed Groups: A Norm under Customary International Law?, NILR 67 (2020), 427; A. Kees, Responsibility of States for Private Actors, MPEPIL (3/2011); H. Krieger/A. Peters/L. Kreuzer (Hg.), Due Diligence in the International Legal Order, 2021; M. Malaihollo, Due Diligence in International Environmental Law and International Human Rights Law, NILR 68 (2021), 121; M. Milanović, State Responsibility for Non-State Actors, LJIL 22 (2009), 307; R. Pisillo Mazzeschi, The Due Diligence Rule and the Nature of the International Responsibility of States, GYIL 35 (1993), 9; N. Ramsundar, State Responsibility for Support of Armed Groups in the Commission of International Crimes, 2020; A. Seibert-Fohr, Die völkerrechtliche Verantwortlichkeit des Staats für das Handeln von Privaten, ZaöRV 73 (2013), 37; S. Stahl, Schutzpflichten im Völkerrecht – Ansatz einer Dogmatik, 2010; K. Trapp, Shared Responsibility and Non-State Terrorist Actors, NILR 62 (2015), 141; J. Wolf, Die Haftung der Staaten für Privatpersonen nach Völkerrecht, 1997; V. Zambrano, Il «controllo effettivo» nella ripartizione della responsabilità tra organizzazioni internazionali e Stati, 2014.

Zu II. A. Abass, Consent Precluding Wrongfulness: A Critical Analysis, ICLQ 53 (2004), 211; M. Agius, The Invocation of Necessity in International Law, NILR 56 (2009), 95; M. Aznar Gómez, La distinction entre sanctions et contre-mesures, RBDI 46 (2013), 111; C. Beaucillon (Hg.), Research Handbook on Unilateral and Extraterritorial Sanctions, 2021; A. Bills, The Relationship between Third-party Countermeasures and the Security Council's Chapter VII Powers: Enforcing Obligations *erga omnes* in International Law, NorJIL 89 (2020), 117; C. Binder, Die Grenzen der Vertragstreue im Völkerrecht, 2013, 317 ff; I. Bogdanova, Unilateral Sanctions in International Law and the Enforcement of Human Rights, 2022; T. Christakis, L'Etat avant le droit? Exception de «sécurité nationale» en droit international, RGDIP 112 (2008), 5; S. Darcy, Retaliation and Reprisal, in: Weller (Hg.), Oxford Handbook on the Use of Force, 2015, 879; M. Dawidowicz, Third-Party Countermeasures in International Law, 2017; C. Farhang, The Notion of Consent in Part One of the Draft Articles on State Responsibility, LJIL 27 (2014), 55; T. Franck, On Proportionality of Countermeasures in International Law, AJIL 102 (2008), 715; A. Gattini, Zufall und force majeure im System der Staatenverantwortlichkeit anhand der ILC-Kodifikationsarbeit, 1991; H.-J. Heintze, Völkerrechtliche Aspekte des Notstandsrechts, in: Zwitter (Hg.), Notstand und Recht, 2012, 47; M. C. Hoelck Thjoernelund, State of Necessity as an Exemption from State Responsibility for Investments, MPUNYB 13 (2009), 423; Y. Kerbrat, Sanctions et contre-mesures: risques de confusion dans les articles de la CDI sur la responsabilité des organisations internationales, RBDI 46 (2013), 103; M. Longobardo, State Immunity and Judicial Countermeasures, EJIL 32 (2021), 457; J. D. Ohlin/L. May, Necessity in International Law, 2016; F. Paddeu, A Genealogy of force majeure in International Law, BYIL 82 (2011), 381; *dies.*, Justification and Excuse in International Law: Concept and Theory of General Defences, 2019; A. Reinisch, Sachverständigengutachten zur Frage des Bestehens und der Wirkung des völkerrechtlichen Rechtfertigungsgrundes „Staatsnotstand“, ZaöRV 68 (2008), 3; M. Ruffert, Reprisals, MPEPIL (1/2021); S. Subedi (Hg.), Unilateral Sanctions in International Law, 2021; A. Sykes, Economic “Necessity” in International Law, AJIL 109 (2015), 296; N. Tsagourias, Necessity and the Use of Force: A Special Regime, NYIL 41 (2010), 11; A. Tzanakopoulos, L'invocation de la théorie des contre-mesures en tant que justification de la désobéissance au Conseil de sécurité, RBDI 46 (2013), 78; V. Tzevelekos, Vers la reconnaissance d'un droit étatique à l'autoprotection?, RGDIP 112 (2008), 295; M. Xiouri, The Breach of a Treaty: State Responses in International Law, 2021.

Zu III. E. Canizzaro, Is There an Individual Right to Reparation?, FS Dupuy, 2014, 495; B. Graefrath, Responsibility and Damages Caused: Relationship between Responsibility and Damages, RdC 185 (1984), 9; C. Gray, Remedies, in: Romano/Alter/Aygerou (Hg.), The Oxford Handbook of International Adjudication, 2014, 871; C. Hoss, Satisfaction, MPEPIL (4/2011); M. Langer, Les

assurances et garanties de non-répétition, FS Dupuy, 2014, 539; B. McGonigle Leyh/J. Fraser, Transformative reparations: changing the game or more of the same?, CILJ 8 (2019), 39; D. Müller, Le prix de la vie humaine en droit international: la réparation des dommages en cas de pertes de vies humaines dans le droit de la responsabilité internationale, AFDI 60 (2014), 429; D. I. Odiar-Contreras Garduño, Collective Reparations: Tensions and Dilemmas Between Collective Reparations with the Individual Right to Receive Reparations, 2018; D. Shelton, Righting Wrongs: Reparations in the Articles on State Responsibility, AJIL 96 (2002), 833; *dies.*, Reparations, MPEPIL (8/2015); *dies.*, Remedies in International Human Rights Law, 3. Aufl. 2015; A. Tanzi, Restitution, MPEPIL (1/2021); C. Tomuschat, Individual Reparation Claims in Instances of Grave Human Rights Violations, in: Randelzhofer/Tomuschat (Hg.), State Responsibility and the Individual, 1999, 1; S. Wittich, Compensation, MPEPIL (5/2008).