

II. Might and Right

1. International Law: the Concept and the Word

Since its onset at the turn towards the eighteenth century, the historiography of international law has been dominated by two main questions: since when has international law existed and in which parts of the world has it existed? Evidently, answers to these questions depended on the definition of international law, with the consequence that the historiography of international law has not just devoted itself to the subject matters assigned to it but also to the relevant histories of words and concepts.. For one, the current German word *Völkerrecht*, like its French counterpart *droit des gens*, is a loan formation from Latin *ius gentium*, even though these words have come to represent the concept of international law only secondarily and through a long and complicated process of verbal and conceptual change lasting from the seventh to the seventeenth century.¹

At the time of the Roman Republic as well as of the Roman Empire of Antiquity, the word *ius gentium* denoted a set of legal norms seen as valid among all “nations” (*gentes*) within their states.² Thus, the *ius gentium* overlapped with Roman civil law to the extent that it comprised legal norms , which, in Roman perception, were valid not merely in one but among other “*gentes*” elsewhere in the world as well. At the same time, however, the phrase *ius gentium* embraced the set of legal norms that had been set in force for non-Romans leading their lives temporarily or indefinitely in the city of Rome, however far its reach may have been. This latter connotation was still the dominant meaning of the phrase as late as in the thirteenth century, as St Thomas Aquinas recorded in his work.³ In this respect, the phrase *ius gentium* has not had any link to the various meaning of the words signifying international law at present.⁴ The framework of legal norms, currently subsumed under the concept of international law was, in the late Roman Republic, represented by a different phrase, to which Cicero referred with the formula “*ius belli ac pacis*”, the law of war and peace.⁵ With that usage, Cicero represented a great tradition, going back to the Ancient Near East and continuing, in the Mediterranean area as well as in Europe north of the Alps well into the end of the sixteenth century. Moreover, the same concept of the law of war and peace informed the legal norms accepted as valid for the relations among states in East Asia down to the nineteenth century.

¹ See: Harald Kleinschmidt, *Geschichte des Völkerrechts in Krieg und Frieden* (Tübingen, 2013), pp. 140-144, 295-300.

² *Corpus iuris civilis. Institutiones*; *Digesta*; partly edited by Okko Behrends, Rolf Küntel, Berthold Kupisch and Hans Hermann Seidel, *Dig. 1,1,9* (Heidelberg, 1995), p. 94; *Inst. 1, 2, 1, S. 2*. Isidore of Seville, *Etymologiarvm sive originvm libri XX*, book V, chap. 4, edited by Wallace Martin Lindsay (Oxford, 1911), s. p.

³ Thomas von Aquin, *Summa theologiae*, *Summa secunda*, chap. 2, q. 57 a. 3, edited by Roberto Busa SJ, *Sancti Thomae Aquinatis Opera omnia*, vol. 2 (Stuttgart, 1980), pp. 573-768, at p. 599.

⁴ Max Kaser, *Ius gentium* (Forschungen zum Römischen Recht, 40) (Cologne, Weimar and Vienna 1993), p. 15.

⁵ Marcus Tullius Cicero, *De re publica*, book II, chap. 17, nr 31 [various edns].

However, at the turn towards the seventeenth century a change of meanings took place that was initially specific to Europe. The ancient law of war and peace then came under the newly created phrase *ius inter gentes*, the law among states. The phrase referred to the set of legal rules seen as valid for the relations among states and covered not just matters of war and peace but also other realms of the law, such as trade.⁶ At the turn towards the nineteenth century, then, the new formula “international law” came up, first in the English language⁷ initially comprising the law among states.

The historiography of international law has, due to its origins mainly in jurisprudence, operated with the current concept of international current during the nineteenth and twentieth centuries. During the nineteenth⁸ and the longest part of the twentieth centuries,⁹ this concept covered a set of legal norms, seen as having originated from two main “sources”, namely the habit of entering into voluntary agreements among governments of states, whereby states were regarded as the sole legal subjects with legislative competence in the international arena, and incrementally established custom that came to be accepted as binding in the intercourse among states. By consequence, the majority of nineteenth- and twentieth-century legal theorists would not recognise any legislative authority positioned above states as sovereigns and, by implication, refused to acknowledge any mechanism unconditionally capable of enforcing legal norms over these sovereign states. As, at the same time, these theorists assumed that law could only be regarded as valid if and as long as it was, at least on principle, enforceable, a legal doctrine gained increasing acceptance, according to which some “law between powers” (*Zwischen-Mächte-Recht*) had existed in Antiquity, the European Middle Ages and beyond the confines of Europe during the Modern Era and that this alleged “law between powers” might have been resorted to in given situations but had never risen to the level of enforceable law above states,¹⁰ But this doctrine has, not just in recent years,¹¹ but also in the course

⁶ Among the first: Francisco Suárez, SJ, *De legibus (III 1-16)*, book II, chap. 19, nr 3, 6, edited by Luciano Pereña Vicente and Vidal Abril (Corpus Hispanorum de pace, 15) (Madrid, 1975), pp. 56-58, 60-62.

⁷ Apparently first in: Jeremy Bentham, ‘Introduction to the Principles of Morals and Legislation [1789]’, book XIX, chap. 2, nr 25, in: *The Works of Jeremy Bentham*, edited by John Bowring, vol. 1 (London, 1838), pp. 1-154, at p. 149 [reprint of this edn (New York, 1962)].

⁸ Georg Jellinek, *Die rechtliche Natur der Staatsverträge. Ein Beitrag zur juristischen Konstruktion des Völkerrechts* (Vienna, 1880), pp. 49, 57. Jellinek, *System der subjektiven öffentlichen Rechte* (Freiburg, 1892), p. 298. Heinrich Triepel, *Völkerrecht und Landesrecht* Leipzig, 1899), pp. 76, 80 new edn (Tübingen, 1907); reprint (Aalen, 1958); French version (Paris, 1920)].

⁹ Knut Ipsen, ‘Regelungsbereich, Geschichte und Funktion des Völkerrechts’, Rz 15, in: Ipsen, ed., *Völkerrecht*, sixth edn (Munich, 2014), pp. 1-45, at p. 5 [first published (Munich, 1979); third edn (Munich, 1990); fourth edn (Munich, 1999); fifth edn (Munich, 2004)]. Wolfgang Graf Vitzthum, ‘Begriff, Geschichte und Rechtsquellen des Völkerrechts’, in: Vitzthum, ed., *Völkerrecht*, Rz, 5, eighth edn (Berlin, 2010), pp. 7, 8 [first published (Berlin, 1997); second edn (Berlin, 2001); third edn (Berlin, 2004); fourth edn (Berlin, 2007)].

¹⁰ Friedrich August von der Heydte, ‘Franciscus de Vitoria und sein Völkerrecht’, in: *Zeitschrift für öffentliches Recht* 13 (1933), pp. 239-268, at p. 245. Heinhard Steiger, ‘Zum fränkischen Kriegsrecht des karolingischen Großreiches (741 – 840)’, in: Wilhelm Fiedler, ed., *Verfassungsrecht und Völkerrecht. Gedächtnisschrift für Wilhelm Karl Geck* (Cologne, 1989), pp. 803-829. Steiger, *Die Ordnung der Welt. Eine Völkerrechtsgeschichte des karolingischen Zeitalters (741 – 840)* (Cologne, 2010), pp. 245-293. Steiger, ‘Zwischen-Mächte-Recht im Frühmittelalter’, in: Michael Jucker and Martin Kintzinger, eds, *Rechtsformen internationaler Politik* (Zeitschrift

of the nineteenth century,¹² encountered objections. If the semiotic triangle of word, concepts and referents is taken into consideration, the doctrine becomes untenable. This has been so, because the doctrine is irreconcilable with numerous pieces of evidence showing that obligations under the “law of war and peace” as well the “law among states” could very well have been regarded as binding, even though they were practically not enforceable. By consequence, there is no basis for the claim that the concept of international law, as it emerged in Europe during the nineteenth and twentieth century, should be regarded as valid throughout the course of time and everywhere on the globe.¹³

By consequence, it seems advantageous not only to define the concept of international law in ways that transcend the boundaries of time and space, but also to resist the temptation of assuming a succession of several fundamentally different conceptions of statehood. Instead, the conception of statehood should be allowed to be flexible enough to cope with changing concepts of rule. In this way, states can be understood to be political communities above which no one holds superior legislative competence over specifiable groups. Those states, whose original secular legislative competence is neither derived from a superior institution nor is subject to some given and legally binding, that is not voluntarily accepted external influence, count as sovereigns.¹⁴ This definition takes into account the normativity of state rule and the continuity of state institutions, without definitionally excluding the possibility of institutional and conceptual change of statehood. In this capacity, the definition is compatible with the perception of the continuity of state institutions, well recorded to the end of the eighteenth century.¹⁵

These variations of persons and institutions becoming subject to the legislation of international legal

für Historische Forschung, Beiheft 45) (Berlin, 2011), pp. 47-74.

¹¹ Amnon Altman, ‘Tracing the Earliest Recorded History of International Law, parts I – V’, in: *Journal of the History of International Law*, vol. 6 (2004), pp. 153-172; vol. 7 (2005), pp. 115-136; vol. 10 (2008), pp. 1-33; vol. 11 (2009), pp. 125-186, 333-356; vol. 12 (2010), pp. 101-153. Altman, *Tracing the Earliest Recorded Concepts of International Law* (Leiden, 2012). Wolfgang Preiser, *Frihe völkerrechtliche Ordnungen der außereuropäischen Welt* (Sitzungsberichte der Wissenschaftlichen Gesellschaft der Johann-Wolfgang-Goethe-Universität Frankfurt/Main, 1976, nr 4/5) (Wiesbaden, 1976). Karl-Heinz Ziegler, ‘Continuity and Discontinuity in European International Law. Ancient Near East and Ancient Greece’, in: Thilo Maruhn and Heinhard Steiger, eds, *Universality and Continuity in International Law* (The Hague, 2011), pp. 133-148.

¹² William Alexander Parsons Martin [= Wei-Liang Ding], ‘Traces of International Law in Ancient China’, in: *Verhandlungen des 5. Internationalen Orientalisten-Congresses*, vol. 2 (Berlin, 1881), pp. 71-78 [reprinted in: *The International Review* 14 (1883), pp. 63-77; also published s. t.: ‘Traces of International Law in China’, in: *The Chinese Recorder* 14 (1883), pp. 380-393; French version in: *Revue de droit international et de législation comparée* 14 (1882), pp. 227-242].

¹³ This is the demand by: Martti Antero Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law. 1870 – 1960* (Cambridge, 2002), p. 298 [fifth edn (Cambridge, 2008)].

¹⁴ Kleinschmidt, *Geschichte* (note 1), p. 8.

¹⁵ See the surveys by: Harald Kleinschmidt, *The Nemesis of Power* (London, 2000), pp. 114-146. Merio Scattola, ‘Schlözer und die Staatswissenschaften des 18. Jahrhunderts’, in: Heinz Duchhardt and Martin Espenhorst, eds, *August Ludwig (von) Schlözer in Europa* (Veröffentlichungen des Instituts für europäische Geschichte Mainz, 86) (Göttingen, 2012), pp. 179-195. Paul-Ludwig Weinacht, *Staat* (Beiträge zur Politischen Wissenschaft, 2) (Berlin, 1968).

norms have to be respected in any effort towards any definition of an historical concept of international law, which is aimed at seeking applicability across cultures. Such a concept should be capable of comprising changes, which are to be described and, if possible to be explained, through an historical narrative. It is not conducive to an historical narrative to conceptualise international law in accordance with standards that have only been accepted in Europe since the nineteenth century in the conduct of relations among states. This is so because the postulate that international law should merely regulate the activities of governments of states and that states should be treated as “actors” in the international arena at that, is everything but self-evident, when various epochs and cultures come into sight. By contrast, it seems appropriate for the purposes of an historical narrative to define international law as a complex of norms seeming apt to regulative collective actions that are intended to have an effect across borders of recognised significance, and emerge from communities, whose members perceive one another as outsiders. In this context legal norms should be regarded as those rules which entail sanctions against infringement and which appear to be capable of legitimately restricting the freedom of choice of patterns of actions of the individual. According to this definition, international law does not have to exist either in the form of collections of written texts or in any other systematically composed and codified form in order to qualify as law, but receives its legal quality solely from the recognisable fact that the norms composing it may enforce and prohibit certain patterns of actions of persons as members of certain types of communities, without necessarily having to guarantee enforceability under all circumstances.¹⁶ This definition remains applicable even though, as in any other realm of the law, breaches of legal norms can occur; for as long as a breach of a norm enforcing or prohibiting a certain pattern of action continues to be acknowledged as such and as long as efforts towards its enforcement are possible, the norms remains valid.

In this respect and for the purpose of the following narrative, international law shall be approached as an historical concept, combining a rigid definitional frame with the admission of the potential of change of some elements of its contents, thereby avoiding culture-centrism and teleology. It also follows from this approach that the currently ubiquitous juristic definition of international law as the framework of norms regulating interactions among states cannot be treated as the result of some seemingly inevitable process of the globalisation of an originally culturally specific concept, but should, instead, be categorised as the product of a variety of factors, which to specify is the task of the ensuing narrative. In so far, the historiography of international law is not just value neutral description and cold-blooded analysis of a certain assemblage of past occurrences but also the critical deconstruction of perceptions. The most consequential of these perceptions has informed the

¹⁶ Triepel, *Völkerrecht* (note 8), pp. 28-29.

demand that international law should only be regarded as existent, if and as long as rulers or governments of states, in accordance with the nineteenth-century European concept of the state, display willingness to acknowledge the priority of right over might in the international arena. This perception is to be deconstructed critically, because it raises the question of how an authoritative decision about the validity of legal norms can be arrived at in the international arena, if, as during the nineteenth and parts of the twentieth century, different and partly incompatible concepts of international law have clashed, specifically with respect to the law of public treaties among states.¹⁷

2. The Concept of International Relations

It is more difficult to come to grips with the historical dimension of international relations than that of international law. Contrary to the concept of international law, which, at least within the confines of jurisprudence, has been subject to the constraints of disciplinary systematics, various concepts, different in scope, are current with reference to the history of international relations. For one, the phrase history of international relations comes along as a simple neologism for the long established history of diplomacy, with an infusion of elements of structural history.¹⁸ This concept has

¹⁷ See: Kleinschmidt, *Geschichte* (note 1), pp. 368-377.

¹⁸ Prominent in German-speaking areas: Heinz Duchhardt, *Balance of Power und Pentarchie. Internationale Beziehungen. 1700 – 1785* (Handbuch der Geschichte der internationalen Beziehungen, 4) (Paderborn, Munich, Vienna and Zurich, 1997), pp. 19-40. Michael Erbe, *Revolutionäre Erschütterung und erneuertes Gleichgewicht. Internationale Beziehungen. 1785 – 1830* (Handbuch der Geschichte der internationalen Beziehungen, 5) (Paderborn, Munich, Vienna and Zurich, 2004), pp. 26-88. Klaus Malettke, *Hegemonie – Multipolares System – Gleichgewicht. Internationale Beziehungen. 1648/1659 – 1713/1714* (Handbuch der Geschichte der internationalen Beziehungen, 3) (Paderborn, Munich, Vienna and Zurich, 2012), pp. 53-72. See also: Paul W. Schroeder, 'Why Realism Does Not Work Well for International History (Whether or Not It Represents a Degenerate I[n]ternational R[elations] Research Strategy)', in: John A. Vasquez and Colin Elman, eds, *Realism and the Balancing of Power. A New Debate* (Englewood Cliffs, 2003), pp. 114-127. On methodology see: Ursula Lehmkuhl, 'Diplomatiegeschichte als internationale Geschichte. Ansätze, Methoden und Forschungsergebnisse zwischen Historischer Kulturwissenschaft und soziologischem Institutionalismus', in: *Geschichte und Gesellschaft* 37 (2001), pp. 394-423, who positions diplomatic history between some "social history of foreign policy and a cultural history of international relations" (Sozialgeschichte der Außenpolitik und einer Kulturgeschichte der internationalen Beziehungen) (at p. 422) and ascribes to these disciplines the task of dealing with "processes of international socialisation or with phenomena of transnational politics" (internationalen Vergesellschaftungsprozessen oder mit Phänomenen transnationaler Politik) (at p. 423), as if diplomatic history has been sandwiched between the historiography of national societies and their constraints on the one side and, on the other, of the historiography of transnational cultures and its possibilities. Lehmkuhl's concept of socialisation in the international arena is similar to: Kai Alderson, 'Making Sense of State Socialisation', in: *Review of International Studies* 27 (2001), pp. 415-433. Lehmkuhl takes for granted that her definition of diplomacy is valid for the nineteenth and twentieth centuries, but overlooks that it is difficult to be applied to earlier periods, given the prominence of non-state actors in diplomacy. She also regards it as unnecessary to illustrate what she believes then meaning of "culture" should be in her context. The same practice in: Charles S. Maier, 'The Historiography of International Relations', in: Michael Gedaliah Kammen, ed., *The Past before Us. Contemporary Historical Writing in the United States* (Ithaca, 1980), pp. 355-387, who pleaded in favour of the inclusion of culture into the field of diplomatic history, but took it to be necessary to call attention to the requirement that some "multiarchival research" should take place, as if the *audiatur et altera pars* had just been established as a methodological demand.

commonly been applied only to the post 1500s and covers parts of the world other than Europe only with respect to the nineteenth and twentieth centuries. Beyond this usage, variations of the more recent phrases “international history” and “global history” have appeared in languages other than English and have even entered library classification schemes¹⁹ as well as denominations of teaching positions in academe, such as for professorships of “international history” at the universities of Erfurt, Munster and Trier, while at Marburg, one finds the phrase as the name of research institutions and course programs without attachment to a specific office. Likewise, teaching positions for “global history” have been institutionalised at the Free University of Berlin, as well as at the universities of Constance and Salzburg. In a variety of methodologies, the terms “history of international relations” and “international history” are interutilised, whereby the international, commonly spotted in the nineteenth and twentieth centuries, somehow appears as the extract from apparently suprastatal economic, military and political activities of state governments affecting many parts of the world..²⁰ Others equate the “history of international relations” with the political history of the global international system, seen as in operation during the nineteenth and twentieth centuries, while transcending the narrow bounds of state diplomacy.²¹ Moreover, the “history of international relations” comes to be identified not merely with “international history” but also with “global history”, whereby the latter has been defined formally as “the history of the continuous, though not

¹⁹ The internet network “historicum.net” of the Bayerischen Staatsbibliothek at Munich uses „international history“ (internationale Geschichte) as the roof term for “history of foreign policy” (Geschichte von Außenpolitik), „history of international politics“ (Geschichte der internationalen Politik), and “history of international relations” (Geschichte internationaler Beziehungen) [<http://langzeitarchivierung/bib-bvb.de/>].

²⁰ Wilfried Loth, ‘Einleitung’, in: Loth and Jürgen Osterhammel, eds, *Internationale Geschichte. Themen – Ergebnisse – Aussichten* (Studien zur internationalen Geschichte, 10) (Munich, 2000), Sp. VII. Akira Irie [= Iriye], ‘The Making of a Transnational World’, in: Irie, ed., *Global Interdependence. The World after 1945* (A History of the World, 6) (Cambridge, MA, and London, 2014), pp. 679-847 [first published (Munich, 2012)], at pp. 682-683. Iriye equated the term “international history” with that of “transnational history”, into which he includes “phenomena and themes that cut across national boundaries and in which non-national actors (such as nongovernmental organizations and business enterprises) and entities (civilizations, races, for instance) play crucial roles.” (at p. 682). Accordingly, “transnational history” is international history, which, albeit being global, does not fall into the province of diplomacy. For this definition, Irie refers to Ian Tyrrell, ‘American Exceptionalism in an Age of International History’, in: *American Historical Review* 96 (1991), pp. 1031-1055, who, at p. 1038, used the term “transnational history” for that arena of historiography, which reaches beyond the activity of state governments but not does extend across the globe. Under “transnational”, both authors refer to past occurrences they identify as superstatal or as non-statal, thereby remaining confined to imprecise Anglophone diction that interutilises “state” and “nation” and postulate that conventional state diplomacy has always been national agenda. The Göttingen University Seminar für Mittlere und Neuere Geschichte lists “Transnationale Geschichte” as a sort of academic discipline, even though there is neither a course of study offered under that title in the department nor a professorship so denominated. For the view that “international history” is a neologism to give expression to diplomatic history and history of international relations see: Eckart Conze, ‘Jenseits von Männern und Mächten. Geschichte der internationalen Politik als Systemgeschichte’, in: Hans-Christof Kraus and Nicklas Thomas, eds, *Geschichte der Politik* (Historische Zeitschrift. Beihefte, N. F. 44) (Munich, 2007), pp. 41-64, at pp. 41-43.

²¹ Anselm Döring-Manteuffel, ‘Internationale Geschichte als Systemgeschichte. Strukturen und Handlungsmuster im europäischen Staatensystem des 19. und 20. Jahrhunderts’, in: Wilfried Loth and Jürgen Osterhammel, eds, *Internationale Geschichte. Themen – Ergebnisse – Aussichten* (Studien zur internationalen Geschichte, 10) (Munich, 2000), pp. 93-115.

steadily increasing interdependency among far-reaching interactions and their consolidation into hierarchically stratified networks, specifically those with a tendency towards planetary extension” (Geschichte der kontinuierlichen, nicht aber stetigen Verdichtung weiträumiger Interaktionen und ihrer Konsolidierung zu hierarchisch gestaffelten Netzwerken, vor allem solchen mit tendentiell planetarischer Erstreckung).²² In this definition, globality appears to be linked to universality in the sense of some interactionistic “formation of universalistic patterns of thought and norms” (Herausbildung von universalistischen Denkformen und Normen), again within the temporal boundaries of the nineteenth and twentieth centuries.²³ This concept of “global history” will not exclude the recognition as a given of the validity of suprastatal legal norms. Instead, the definition includes the expectation that the generation of such norms requires purposeful human action and, similar to the historiography of international law, presupposes the existence of a process through which, in the course of the nineteenth and twentieth centuries, certain patterns of interaction have entailed the globalisation of certain European “patterns of thought”. Last but not least, the “history of international relations” has been paralleled with “world history” as the history of the world system,²⁴ whereby this world system is taken to have come into existence during the fifteenth

²² Jürgen Osterhammel, ‘Globalgeschichte’, in: Hans-Jürgen Goertz, ed., *Geschichte. Ein Grundkurs*, third edn (Reinbek, 2007), pp. 592-610, at p. 596. Likewise: Hubertus Büschel, ‘Internationale Geschichte als Globalgeschichte’, in: Iris Schröder, Susanne Schattenberg and Jan-Holger Kirsch, eds, *Internationale Ordnungen und neue Universalismen* (Zeithistorische Forschungen, 8) (Göttingen, 2011), pp. 439-445. The purportedly “tendential” globalisation, for Jeremy Martin Black, *Introduction to Global Military History. 1775 to the Present Day* (London, 2005), pp. XVII-XVIII, consists in Asia being “not as a mere adjunct of the West” and in references to the colonisation and decolonisation of the so-called “Third World”. Similarly: Black, *War and the World. Military Power and the Fate of Continents. 1450 – 2000* (New Haven, 1998). The well-founded counter-position, viewing global historiography primarily as method has been argued by: Andrea Komlosy, *Globalgeschichte* (Vienna, Cologne and Weimar, 2011), p. 9: “Der Globalhistoriker ... ist in erster Linie an Vergleich, dem Inbeziehungsetzen, der Einordnung in den größeren räumlichen oder epochenübergreifenden Zusammenhang interessiert.”

²³ Osterhammel, ‘Globalgeschichte’ (note 22), p. 596. Likewise: Dominic Sachsenmaier, *Global Perspectives on Global History* (Cambridge, 2011), pp. 11-57. For the claim that global historians are creating global history see: Patrick Manning, *Navigating World History. Historians Create a Global Past* (New York, 2003) [further edn (New York, 2005)]. On tying global history to what appears to be a process of globalisation see: Anthony G. Hopkins, ‘The History of Globalization and the Globalization of History?’, in: Hopkins, ed., *Globalization in World History* (London and New York, 2002), pp. 11-45. Bruce Mazlish and Ralph Buultjens, eds, *Conceptualizing Global History* (Boulder, 1993), pp. 1-2. Mazlish, ‘Comparing Global History to World History’, in: *Journal of Interdisciplinary History* 28 (1998), pp. 385-395.

²⁴ Hans-Heinrich Nolte, ed., *Weltsystem und Geschichte* (Zur Kritik der Geschichtsschreibung, 3) (Göttingen, 1985). Nolte, ‘Zur Rezeption des Weltsystemkonzepts in Deutschland’, in: Matthias Middell, ed., *Weltsystem und Globalgeschichte* (Comparativ, vol. 4, issue 5) (Leipzig, 1994), pp. 91-100. Ders., ‘Weltsystemkonzept’, in: Michael Geyer, ed., *Neue Entwicklungen in der Geschichtswissenschaft*, part 2: Universal-, Welt- und Globalgeschichte (Beiträge zur Historischen Sozialkunde, Sondernummer 32) (Vienna, 1998), pp. 11-20. Nolte, ‘Das Weltsystem-Konzept. Debatte und Forschung’, in: Margarete Grandner, Dietmar Rothermund and Wolfgang Schwentker, eds, *Globalisierung und Globalgeschichte* (Vienna, 2005), pp. 115-138. Nolte used the concept of the “world-system” according to: Immanuel Maurice Wallerstein, ‘World System versus World-Systems’, in: Andre Gunder Frank and Barry K. Gills, eds, *The World System. Five Hundred Years or Five Thousand?* (London and New York, 1993), pp. 292-298 [reprints (London and New York, 1996; 1999); first published in: *Critique of Anthropology* 11 (1991)]. Wallerstein, ‘The Rise and Future Demise of the World Capitalist System’, in: *Comparative Studies in Society and History* 16 (1974), pp. 387-415. Wallerstein, ‘World-Systems Analysis’, in: Anthony Giddens and Jonathan Turner, eds, *Social Theory Today* (Cambridge and Stanford, 1987), pp. 309-324.

century.

The various concepts of the “history of international relations” are overlapping in certain respects. For one, in including the postulate that suprastatal legal norms should solely be acknowledged as secondary and human-made, all these concepts prioritise might over right as the seeming platform on which international relations have taken place and, as a rule,²⁵ exclude culture, while including economic matters merely as a secondary object of investigation. Epochal boundaries, to the extent that they are usually stated, are commonly derived from the *histoire événementielle*, for example the so-called “discoveries” at the turn towards the sixteenth century, and the changes of communication and transport technology during the nineteenth century. By contrast, issues relating to the history of perception, such as the globalisation of the European world picture from the beginning of the sixteenth century, have hardly been touched in “global history”²⁶ and play no role in the drawing of epochal boundaries. This, “global history” does not provide an answer to the question, why the definition applied to it, should not be accepted as valid, say, for the Ancient Near East or for the Arab world from the eighth to the twelfth centuries, in accordance with the then accepted picture of the world as a tri-continental unity. That deficit implies that the question, since when and where “history of international relations” has existed has remained unanswered beyond arbitrary settings, which usually have been gleaned ad hoc from recent European perspectives and without recourse to contemporary records. Hence, the “history of international relations”, like the historiography of international law, demands its historical concept. First and foremost, this concept has to be able to cope with the epistemological need of the admission that variations and changes in the conceptualisation of “actorhood” in international relations can occur in space and time. Whoever admits only governments of sovereign states as “actors” in the international arena, gets evidence from previous records fundamentally wrong, because, up until the end of the eighteenth century, private chartered long-distance trading companies held the status of legal subjects under international law, even though they were non-state “actors”.²⁷ If the “history of international relations” should

Wallerstein, ‘World-Systems Analysis. Theoretical and Interpretative Issues’, in: Wallerstein, Terence K. Hopkins, Robert L. Bach, Christopher Chase-Dunn and Ramkrishna Mukherjee, eds, *World-Systems Analysis* (Beverly Hills, London and New Delhi, 1982), pp. 91-103.

²⁵ A different position took: Jürgen Osterhammel, ‘Weltordnungskonzepte’, in: Jost Dülffer and Wilfried Loth, eds, *Dimensionen internationaler Geschichte* (Studien zur internationalen Geschichte, 30) (Munich, 2012), pp. 409-427, at pp. 415-420, who allows culture to be considered as the object of the historiography of international relations.

²⁶ Sebastian Conrad, *Globalgeschichte* (Munich, 2013), pp. 193-247. Jürgen Osterhammel and Niels P. Petersson, *Geschichte der Globalisierung* (Munich, 2003). Peter E. Fäßler, *Globalisierung. Ein historisches Kompendium* (Weimar, Cologne and Vienna, 2007), pp. 52-97. Reinhard Sieder and Ernst Langthaler, ‘Einleitung. Was heißt Globalgeschichte’, in: Sieder and Langthaler, eds., *Globalgeschichte. 1800 – 2010* (Vienna, 2010), pp. 9-38.

²⁷ Karl Friedrich Pauli [praes.] and Johann Andreas Buchholtz [resp.], *De iure belli societatis mercatoriae maioris privilegatae*. LLD. thesis (University of Halle, 1751). On long-distance trading-companies conducting intercontinental diplomacy see: Kleinschmidt, *Geschichte* (note 1), p. 241.

fulfill the tasks, not only of tracing the evident pragmatics of diplomatic interactions among states, but also theory-related issues of state formation and of the generation of the idea of state succession, it is in need of a concept of “actorhood” in international relations that is not focused solely upon the state. If this is so, the “history of international relations” must be based on concept of “actorhood” defined in terms of groups, which share a common, politically relevant collective identity and the members of which recognise one another mutually as outsiders.²⁸

3. *Perceptions of the Relationship between Might and Right*

Against the many parallels between the historiographies of international law and international relations, mainly in view of methodological issues, there are serious differences when the subject matter comes into sight. Even though both historiographies put on display the relationship between might and right in interactions among groups, whose members mutually recognise one another as outsiders, they represent opposing approaches. Thus, the main theme of the historiography of international law is the question of whether or not the use of force is legal restrictions. Up to the end of the eighteenth century, answers often given to this question claimed that international law as valid without enforcing institutions, not only in peacetime but even under the constraints of war. Put differently, the historiography of international law, during this period, tended to narrate both, in respect of pragmatics, the set of occurrences, which put on record the subjection of relations among groups to overarching legal norms, and, in theoretical respects, those principles, which demanded just that subjection. By contrast, the historiography of international law took no more than passing notice of those theories, whose advocates denied the existence of enforceable international legal norms.²⁹ For the nineteenth and twentieth centuries, the historiography of international law devoted itself mainly to records displaying international law as the result of customary or purposeful human action, that is, mainly on treaty-making. Quite on the contrary, the historiography of international relations put on its agenda the question under which circumstances and how far the subjection of the conduct

²⁸ Harald Kleinschmidt, *Geschichte der internationalen Beziehungen* (Stuttgart, 1998).

²⁹ Baruch Spinoza, *Tractatus theologico-politicus* [1670], edited by Carl Gebhardt, *Spinoza, Opera*, vol. 3 (Heidelberg, 1925), pp. 189-200 [reprint of Gebhardt's edn (Heidelberg, 1972); newly edited by Günter Gawlick and Friedrich Niewöhner, *Spinoza, Opera*, vol. 1 (Darmstadt, 2008)]. John Austin, *The Province of Jurisprudence Determined* (London, 1832), p. 127 [edited by Herbert Lionel Adolphus Hart (London, 1954); second edn of Hart's edn (Burt Franklin Research and Source Works Series, 569 = Selected Essays in History, Economics and Social Science, 185) (New York, 1970); also edited by Wilfrid E. Rumble (Cambridge, 1995); and by David Campbell (Dartmouth, 1998)]. Adolf Lasson, *Princip und Zukunft des Völkerrechts* (Berlin, 1871), pp. 57-58, 62-63. Max von Seydel, *Commentar zur Verfassungsurkunde für das Deutsche Reich*, second edn (Freiburg and Leipzig, 1897), pp. 31-32 first published (Freiburg and Leipzig, 1873)]. Fritz Sander, 'Das Wesen der "Völkerrecht" genannten gesellschaftlichen Gebilde', in: *Zeitschrift für die gesamte Staatswissenschaft* 81 (1926), pp. 80-127. Walter Burckhardt, *Die Organisation der Rechtsgemeinschaft* (Basle, 1927), pp. 329-386 [reprint (Zurich, 1971)].

of relations among groups, whose members recognised one another as outsiders, as subject to the rule of law even without the use of force. Within the perspective of the historiography of international relations, the position argued by deniers of international law, namely that there could not be law above states without the use of force in the last resort, obtained the rank of a standard expectation within its narratives. By consequence, international law has played either no role in the historiography of international relations, such as in writings by Leopold von Ranke the so-called “Jungrankianer”³⁰ as well as in older and even in more recent historiography of diplomacy,³¹ or international law has been discussed solely as an element in political strategies towards the restoration or maintenance of peace³² and in theories of just warfare.³³ Consequently, there is scarce

³⁰ A polemical term used by Karl Gotthard Lamprecht, ‘Rankes Ideenlehre und die Jungrankianer’, in: Lamprecht, *Alte und neue Richtungen in der Geschichtswissenschaft* (Berlin, 1896), pp. 27-79, for his many foes. The rejection of international law was explicit in: Erich Marcks, ‘Entwicklung und Hauptziele der britischen Reichspolitik’, in: Marcks, *Lebensfragen des Britischen Weltreiches* (Berlin, 1921), pp. 1-48, who postulated some “mercantilism” as the dominant factor of British imperial policy since the sixteenth century. A vocal advocate of power politics within the German Empire was: Hermann Oncken, ‘Ziele und Grundlagen der auswärtigen Politik des Deutschen Reiches von 1871 bis 1914’, in: Bernhard Harms, ed., *Volk und Reich der Deutschen* (Berlin, 1929), pp. 143-164. On the “Ranke Renaissance” see: Elisabeth Fehrenbach, ‘Rankerennaissance und Imperialismus in der wilhelminischen Zeit’, in: Bernd Faulenbach, ed., *Geschichtswissenschaft in Deutschland* (Munich, 1974), pp. 54-65.

³¹ Matthew Smith Anderson, *The Rise of Modern Diplomacy. 1450 – 1919* (London and New York, 1993), pp. 20-68. Winfried Baumgart, *Vom europäischen Konzert zum Völkerbund. Friedensschlüsse und Friedenssicherung von Wien bis Versailles* (Erträge der Forschung, 25) (Darmstadt, 1974) [second edn (Darmstadt, 1987)]. William Gerald Beasley, ‘The Foreign Threat and the Opening of the Ports’, in: Marius Berthus Jansen, ed., *The Cambridge History of Japan*, vol. 5: The Nineteenth Century (Cambridge, 1989), pp. 259-307. Ian Clark, *International Legitimacy and World Society* (Oxford, 2007), pp. 37-82. Garrett Mattingly, *Renaissance Diplomacy* (London, 1955) [further edns (London, 1962; 1963; 1964); (Harmondsworth, 1965; 1973); (New York and London, 1970); (New York, 1988)]. William Norton Medlicott, *Bismarck, Gladstone and the Concert of Europe* (University of London Historical Studies, 4) (London, 1956). Harold George Nicolson, *The Evolution of Diplomatic Method* (Chichele Lectures Delivered at the University of Oxford, 1953) (London, 1953) [reprint (London, 1954); further edns s. t.: *The Evolution of Diplomacy* (New York, 1962; 1966)]. Albert Sorel, *Essais d'histoire et de critique* (Paris, 1883), pp. 281-295 [second edn (Paris, 1894); third edn (Paris, 1910); fourth edn (Paris, 1913); fifth edn (Paris, 1930)]. Hillard von Thiesen and Christian Windler, eds, *Akteure der Außenbeziehungen. Netzwerke und Interkulturalität im historischen Wandel* (Externa, 1) (Cologne, Weimar and Vienna, 2010). Claudia Zey and Claudia Märtil, eds, *Aus der Frühzeit der europäischen Diplomatie. Zum geistlichen und weltlichen Gesandtschaftswesen vom 12. bis zum 15. Jahrhundert* (Zurich, 2008). Stephen D. Krasner, ‘Organized Hypocrisy in Nineteenth-Century East Asia’, in: Krasner, *Power, the State and Sovereignty. Essays on International Relations* (New York, 2009), pp. 211-231, at p. 211: “Norms were never taken for granted either by Asian rulers or by Western interlopers.” [first published in: *International Relations of the Asia Pacific* 1 (2001), pp. 173-197].

³² Heinz Duchhardt, ‘Friedensordnungen in Europa. Der Westfälische Friede als Modell?’, in: *350 años de la Paz de Westfalia. 1648 – 1998* (Madrid, 1999), pp. 339-348 [reprinted in: Duchhardt, *Frieden im Europa der Vormoderne*, edited by Martin Espenhorst (Paderborn, Munich, Vienna and Zurich, 2012), pp. 123-132]. Duchhardt, ‘War and International Law in Europe. Sixteenth to Eighteenth Centuries’, in: Philippe Contamine, ed., *War and Competition between States* (Oxford, 2000), pp. 301-329. Duchhardt, ‘Zwischenstaatliche Friedens- und Ordnungskonzepte im Ancien Régime. Idee und Realität’, in: Ronald G. Asch, Wulf Eckart Voß and Martin Wrede, eds, *Frieden und Krieg in der Frühen Neuzeit. Die europäische Staatenordnung und die außereuropäische Welt* (Der Frieden, 2) (Munich, 2001), pp. 37-45 [reprinted in: Duchhardt, *Frieden* (as above), pp. 133-142]. Duchhardt, ‘From the Peace of Westphalia to the Congress of Vienna’, in: Bardo Fassbender and Anne Peters, eds, *The Oxford Handbook of the History of International Law* (Oxford, 2012), pp. 628-653. Martin Kintzinger, ‘Kontakt und Konflikt. Herausforderungen der Diplomatie im Spätmittelalter’, in: Oliver Auge, Felix Biermann, Matthias Müller and Dirk Schultze, eds, *Bereit zum Konflikt. Strategien und Medien der Konflikterzeugung und Konfliktbewältigung im europäischen Mittelalter* (Mittelalter-Forschungen, 20) (Ostfildern, 2008), pp. 275-296.

notice, in most of the general narratives of diplomatic history, of the multi-faceted corpus of theoretical texts featuring the demand that diplomats should act in accordance with international legal norms.³⁴ Moreover, the equally well attested fable for the conventionality of standards of diplomatic patterns of action³⁵ has been censured as the alleged manifestation of some lack of the “modernity” of diplomacy.³⁶ Likewise, the large body of natural law theory, recorded from the seventeenth and eighteenth centuries, was hardly taken notice of in the historiography of international relations.³⁷ Hence, the historiography of international relations has been turned into a metanarrative of the use of force since the turn towards the nineteenth century, as if international law nothing but the easily available instrument legitimising the use of brute force, positioned in proximity to plain state government propaganda.³⁸ That this position reflects the position of the deniers of international law, does not seem to have entered the awareness of historiographers of international relations.

Kintzinger, ‘Thinking International Law in Late Medieval Europe’, in: Thilo Marauhn and Heinhart Steiger, eds, *Universality and Continuity in International Law* (The Hague, 2011), pp. 311-322. Kintzinger, ‘From the Late Middle Ages to the Peace of Westphalia’, in: Fassbender (as above), pp. 607-627. Matthias Schulz, *Normen und Praxis. Das Europäische Konzert der Grossmächte als Sicherheitsrat 1815-60* (Studien zur internationalen Geschichte, 21) (Munich, 2009), pp. 36-46.

³³ Paul Keal, *European Conquest and the Rights of Indigenous Peoples. The Moral Backwardness of International Society* (Cambridge Studies in International Relations, 92) (Cambridge, 2003). Keal, ‘International Society and European Expansion’, in: Richard Devetak, Anthony Burke and Jim George, eds, *An Introduction to International Relations. Australian Perspectives* (Cambridge, 2007), pp. 201-212 [further edn (Cambridge, 2008)]. Edward Keene, *Beyond the Anarchical Society. Grotius, Colonialism and Order in World Politics* (Cambridge, 2002), pp. 62-92, 126-134. Martin Kintzinger, ‘Bellum iustum – gerechter Krieg oder Recht zum Krieg?’, in: Ulrich Lappenküper and Reiner Marcowitz, eds, *Macht und Recht. Völkerrecht in den internationalen Beziehungen* (Otto von Bismarck-Stiftung, Wissenschaftliche Reihe 13) (Paderborn, Munich, Vienna and Zurich, 2010), pp. 3-30. Kintzinger, ‘Recht oder Macht?’, in: Michael Jucker, Martin Kintzinger and Rainer Christoph Schwinges, eds, *Rechtsformen internationaler Politik. Theorie, Norm und Praxis vom 13. bis 18. Jahrhundert* (Zeitschrift für Historische Forschung, Beiheft 45) (Berlin, 2011), pp. 9-26.

³⁴ Gabriel Bonnot Abbé de Mably, *Le droit public de l’Europe fondé sur les traités conclus jusqu’en l’année 1740* (Mably, Collection complète des œuvres, 5) (Paris, 1794-1795), pp. 231-232 reprint (Aalen, 1977); first published (Amsterdam, 1748)]. Abraham de Wicquefort, *L’Ambassadeur et ses fonctions* (Cologne, 1677) [first published s. t.: *Mémoires touchant les ambassadeurs et les ministres publics* (Cologne, 1676); English Fassung (London, 1716), pp. 277, 281; reprint of the English version, edited by Maurice Keens-Soper (Leicester, 1997); German version (Frankfurt, 1682)].

³⁵ Cornelius van den Driesch, *Historische Nachricht von der Röm[isch] Kayserl[ichen] Groß-Botschafft nach Constantinopel* (Nuremberg, 1723), pp. 50-51. Moser, Johann Jacob, *Teutsches Auswärtiges Staatsrecht* (Neues teutsches Staatsrecht, 20) (Frankfurt and Leipzig, 1772), pp. 14-15 [reprint (Osnabrück, 1967)].

³⁶ Nicholas Greenwood Onuf, *World of Our Making* (Columbia, SC, 1989), pp. 248-249.

³⁷ Although noted in: Diethelm Klippel, ‘Naturrecht und Rechtsphilosophie in der ersten Hälfte des 19. Jahrhunderts’, in: Klippel and Otto Dann, eds, *Das europäische Naturrecht im ausgehenden 18. Jahrhundert* (Studien zum 18. Jahrhundert, 16) (Hamburg, 1995), pp. 270-292. Klippel and Michael Zwanzger, ‘Krieg und Frieden im Naturrecht des 18. und 19. Jahrhunderts’, in: Peter Gottwald, ed., *Festschrift für Dieter Henrich zum 70. Geburtstag* (Bielefeld, 2000), pp. 371-384. Klippel and Michael Zwanzger, ‘Naturrecht als Friedensordnung’, in: Heinrich Rüping, ed., *Die Hallesche Schule des Naturrechts* (Frankfurt, 2002), pp. 95-118; as well as in: Barbara Stollberg-Rilinger, ‘Völkerrechtlicher Status und zeremonielle Praxis auf dem Westfälischen Friedenskongress’, in: Michael Jucker and Martin Kintzinger, eds, *Rechtsformen internationaler Politik* (Zeitschrift für Historische Forschung, Beiheft 45) (Berlin, 2011), pp. 147-164; yet, all these works referred to the issue solely with an eye on Europe.

³⁸ Thus still: Jürgen Osterhammel, *Die Verwandlung der Welt* (Munich, 2009), pp. 731 [fifth edn (Munich, 2010); further edn (Berlin, 2010)].

Hence, the question comes up, what factors have induced historiographers of international relations to adopt the position of the deniers of international law. Put differently, how could it happen that historiographies of international law and international relations have been placed under the sway of diametrically opposed perceptions of the relationship between might and right? The question does not only concern historiography proper, that is retrospectively applied words and concepts, but is also link to the subject matter under the review of these historiographies. This is so, because, in opting for the theoretical position of the deniers of international law, nineteenth- and twentieth-century historiographers of international relations have joined contemporary political decision-makers in charge of the conduct of international relations, who shared the same position. Only too often, these decision-makers took the view that international legal norms should not be given priority in their considerations and strategies, but that, by contrast, the validity of international law should become or remain subject to the will of state “actors” and the state laws governing their actions.³⁹ The bare fact that these theories had only found their way into international legal theories during the nineteenth century, and not before,⁴⁰ has remained unrecognised in the historiography of international relations. Answers to the questions of the priority of might over right and, vice versa, of right over might, however, require the close scrutiny of the perception of international relations as elements of international systems, of natural law theory as well as the culture of diplomacy and the various ways of tracing manifest practical adherence to international legal norms, in each case within analytical framework of the semiotic triangle of words, concepts and referents.

³⁹ Representative of many: Otto von Bismarck, [Instruction to the German Ambassador Graf Paul von Hatzfeldt in London, 9 December 1885], in: Johannes Lepsius, Albrecht Mendelssohn Bartholdy and Friedrich Thimme, eds, *Die Große Politik der Europäischen Kabinette. 1871 – 1914*, vol. 4, nr 789 (Berlin, 1927), pp. 140-142.

⁴⁰ Jellinek, *Natur* (note 8). Jellinek, *System* (note 8). Triepel, *Völkerrecht* (note 8).