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Workshop

GLOBALISATION AND THE WORLD ORDER OF STATES

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Preliminary remark: This workshop is based on a large part of the courses "Law and Globalisation" / "Hukum dan Globalisasi" that I taught in the LL.M. and MIH Programs. I hand out the detailed course materials from these courses, but in the workshop we will particularly focus on some selected topics, which we will discuss in more depth. Participants are welcome to propose topics they are particulary interested in.

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This is not the whole story. See also my contribution on
Preserving the rules-based international legal order in turbulent times
(download at www.thomas-schmitz-yogyakarta.id/Courses/Law_and_Globalisation.htm)

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All materials for download at www.thomas-schmitz-yogyakarta.id. For any questions, suggestions and criticism please contact me via WhatsApp (+62 812 9824 3441) or e-mail (tschmit1@thomas-schmitz-eu.de) or in my office (Building A, room A.VI.11).

(Datei: Contents (LawGlob))

§ 1 The world order of sovereign territorial states

I. The divided planet and its rudimentary legal world order

1) The principle of the territorial state

- Imagine a group of alien legal scholars visiting Earth to study its legal system, expecting to find a beautiful, harmonious and unified legal system on this beautiful, homogeneous-looking Blue Planet. To these extraterrestrial observers, a visit in the 21st century would quickly reveal a weird *fundamental organisational principle that applies to the entire planet* and is nowhere called into question, regardless of any political, ideological, religious, cultural, economic or social divides: the principle of the territorial state. The image emerging from this principle is far less appealing than the beauty of the Blue Planet as seen from afar.
- Although this planet is home to an advanced civilisation with worldwide trade and high mobility, able to travel anywhere on this planet within one day, *legally, neither the planet nor the people living on it constitute a unity*. Mankind is divided into numerous distinct communities (*peoples*) which form independent (*sovereign*) governing entities (*states*). Each state is allocated a delimited portion of the earth's surface (*state territory*), over which it has exclusive power to rule (*state power*), but to which its authority is generally restricted (*territorial principle*).
  The habitable surface is divided entirely amongst states - and only amongst states. Individual states may split into several states or several states may merge to form a single state. In 2026, there are approximately 197 States (incl. Taiwan and Kosovo).
- Unlike in medieval Europe and other parts of the world in the past, the concept of rule by virtue of higher law (*sovereign power/public power*), which as such will also be familiar to the visiting alien legal scholars, refers essentially to the rule of the sovereign governing entity (the state) over the territory over which it has control (the state territory). A sovereign public power (which is neither derived from nor dependent on anyone) can only be obtained by states.

2) Public international law as rudimentary legal world order

- As a consequence of the division of the planet's habitable surface amongst independent states, also the law on this planet is divided. Instead of one comprehensive, integrated global legal order there is a *plurality of coexisting heterogeneous legal orders of the individual states*.
- However, the law that constitutes this world order of states and regulates the rights, obligations and relations of the states, serves as a *rudimentary legal world order*, which is *universally recognized*, also as binding law, but essentially confined to the affairs of states and related matters. This law forms the legal basis for the existence of states on this planet and, consequently, also of their distinct legal systems. It is essentially a law of states but traditionally referred to as "public international law" ["droit international public"].
- The fundamental norms of this rudimentary legal world order are mostly mandatory norms (*ius cogens*) of customary international law. Some are also anchored in the founding treaty of a planetary organisation that unites almost all states (the *United Nations*). This organisation plays an important role in law-making at the global level. However, it has little own law-making power but rather prepares agreements between the states (global *international treaties*). These treaties are open to all states but binding only on those who choose to sign and ratify them. There is *no such thing as global legislation*. The alien legal scholars visiting Earth would be highly irritated by this legal chaos, which does not fit the harmonious, homogeneous appearance of the Blue Planet from a distance.

II. The prominent role of the territorial state

1) The prominent role of the institution of the state

- In the world order of states, the institution of the territorial state occupies center stage - no other kind of organisation, no corporation, not the planet, the human species, the people or the individual.
  - Traditionally, almost everything important derives from, depends on, is controlled by or at least accepted by the state.
- Public international law builds upon a dominant role of the state in law and politics
  - which is guaranteed internally by the sovereignty of the state (→ see § 2)
  - and protected externally by the *prohibition to threat or use force against a state* (art. 2 No. 4 UN Charter) and the *principle of non-intervention* in domestic affairs (customary intern. law and art. 2 No. 7 UN Charter).
- As a consequence, the state also plays an important role in the economy, society, culture and even science.

2) No guarantee of continued existence for the individual state

- However, public international law does not guarantee the existence of the individual state. Instead, it allows for dynamic development:
- In every state, the community sustaining it (the people) can establish its own state order in accordance with its political and ideological choices and its cultural and social characteristics (*right of peoples to self-determination*; cf. art. 1(1) ICCPR/ICESCR, 1(2), 55 UN Charter).
- Yet, people inhabiting a contiguous settlement area and unwilling to accept the existing order, can, by virtue of their own right to self-determination, form a new, independent community (a new people) and establish a new territorial state in their area in accordance with their own choices. This happens frequently, or there are moves in this direction (→ Aceh, Basque Country, Scotland etc.). To avoid this risk, the individual state must perform well and show consideration for the different needs, cultures and ways of life in all its regions.
  - The formation of new states can happen by *dismembration* of a state (→ Soviet Union 1991), *secession* from a state (→ East Timor 2002). *transfer* of a territory to another state (→ Alaska 1867) or *merger* to form a larger unification state (→ USA 1788, Germany 1871).

III. Concept and nature of the state

1) The elements of a "state" in the sense of public international law

- the THREE ELEMENTS DOCTRINE of GEORG JELLINEK (Allgemeine Staatslehre, 1900, p.128 ff.)

a) State territory

- only territorial collectivities can be a state
  - no other public institutions, corporations, associations of persons or ethnic groups (tribes, nations etc.)
- the state territory must be a natural part of the Earth's surface
  - no artificial islands or oil platforms
- the problem of the *sinking island states*
  - island states in the Pacific and Indian Oceans loosing their state territory by flooding caused by the rise of the sea level as a result of climate change
  - concerned states are victims but have not contributed themselves to climate change
  - UNGOING DISSCUSSION, BUT GROWING CONSENSUS: no subsequent loss of the legal status as states

b) State people

- the totality of the citizens of the state
- can be but does not need to be a "nation" in the ethnical sense
- a *community of common destiny* [Schicksalsgemeinschaft]

c) State power

- must be real
- must not vanish permanently (→ failed state; in the past discussed for Somalia)

2) Sovereignty as a consequence, not precondition of the status as a state

- a state is not a state because it is sovereign but it is sovereign because it is a state
  - often confused in European legal and political science literature
  - moreover, do not confuse the sovereignty *of* the state with the sovereignty (of the people) *within* a (democratic) state!

3) The different basic understandings of the state

- totalitarian and liberal (e.g. theories of power, MACCHIAVELLI, CARL SCHMITT)
- philosophical and religious (e.g. Islamism)
- social contract doctrines (e.g. THOMAS HOBBES, JOHN LOCKE, JEAN-JACQUES ROUSSEAU)
- new approaches of the 20th century (HANS KELSEN, RUDOLF SMEND, HERMAN HELLER)
- the state as a legal person (OTTO VON GIERKE; prevailing opinion, except in UK)

4) The different forms of state according to the general theory of state

- differentiation according to the historical basic models: monarchy and republic
- differentiation according to the form of government: monocracy/despotism, aristocracy/oligarchy and democracy/ochlocracy
- differentiation according to the vertical structure: unitary state and federal state

IV. The historical relativity of the world order of sovereign states

- The world order of states is often taken for granted, but this perspective is shortsighted and ignores history:
- Although since ancient times there have always been some political entities on this planet that fall under the definition of the state, the world order of states has developed only gradually since the late Renaissance and, in particular, the Peace of Westphalia (1648).
  - Prior to that, Europe had been shaped for more than thousand years by the *feudal system*, where *rule* was not *based on a* controlled territory but on a *feudal relationship* between the feudal lord and the feudal vassal.
  - In large parts of the pre-colonial word, in particular in *Africa*, rule and law were not linked to a controlled territory but to the individual's *tribal affiliation* (ethnic affiliation).
- Only after World War II did the world order of states take on its present form
  - the present form brought some significant innovations:
  - decolonisation (→ no colonial or imperial powers recognised anymore)
  - prohibition of the threat or use of force against a state
  - protection of the state's existence and territorial integrity against external threats (→ ban on annexation)
  - principle of non-intervention into domestic affairs
- This world order relies on resilient governing entities of sedentary, locally-rooted communities that are capable to act also under difficult conditions. *In the event of* dramatic global changes that force communities to leave their inhospitable territory and cause *uncontrollable large-scale mass migration* (climate change, environmental disasters, a global nuclear war or other dystopian scenarios), this vital precondition may not be met anymore, and the presently 197 states may merge into a few larger ones, relingquish their sovereignty to powerful superstructures - or simply perrish.
  - The example of the fall of the (Western) Roman Empire in 476 and the long period of chaos following it demonstrate that fundamental legal structures on our planet are not necessarily permanent.

§ 2 The sovereignty of the state

- a central element of the very idea of the state

I. The sovereignty of the state as a consequence of the right to self-determination of peoples

- In the world order of states, every people is free to follow its own political & ideological ideas, giving effet to its own cultural & social caracteristics in accordance with its own economic, geographical & civilisational conditions, within its own state order, which it is free to shape (→ right of peoples to self-determination).
  - This right is explicitly anchored in art. 1(1) ICCPR and ICESCR, but also reflected in art. 1(2) and 55 UN Charter and generally recognised as ius cogens customary international law.
- The world order of states does not seek to impose a specific political, economic or social system on all peoples, but *respects human diversity* and provides the institution of the state to live it. This is the reason why this world order is accepted worldwide across all divides.
  - In particular, there is *no obligation to introduce democracy or a market economy* in a state.
- This is realised through the concept of legal independence (= "sovereignity") of the state
  - which is linked to the state rather than to its people, yet serves to implement its people's right to self-determination.

II. The sovereignty of the state as a fundamental pillar of the world order of states that can only be changed or altered by global consensus

- A fundamental pillar on which there is a *broad consensus among mankind across all states*, and which is the premise for the understanding of all relations amongst states and between states and international institutions.
  - The consensus has *even grown in the process of decolonisation* after World War II, which has created numerous new states in the Global South that usually attach particular importance to their sovereignty.
- Any attempt to replace or alter the concept of sovereignty would amount to a fundamental change to the world order of states and therefore require the same broad worldwide consensus. Legally, this can only be achieved through a *global international treaty between all or almost all states* or through fundamental changes to the *ius cogens customary international law*.
  - It is not possible for a few avant-garde states (e.g. in Europe) to take this step on their own without the consensus of the others, as the legal foundations of the world order of states apply equally to all states on the planet.
  - Nor is it possible for legal scholars to simply "define away" the sovereignty of the state through academic publications, as changes to the world order of states require consensus amongst the states, not the scholars. Legal publications aiming in this direction belong to the realm of "academic utopia".

III. The essence of the sovereignty of the state

1) Definition of sovereignty

- Sovereignty is the *underived and independent legal capacity to act in internal and external affairs*, which is only subject to a few basic restrictions under customary public international law but otherwise *unlimited*.

2) The absoluteness of sovereignty

- Sovereignty is, *by its very nature, something absolute*: underived, independent, unlimited. This concept was lived for centuries. It is still upheld today, even though nowadays a few restrictions are acknowledged and states act in practice with little independence...
- The absoluteness of sovereignty entails its *indivisibility*. Something absolute cannot be split up without destroying it and therefore *cannot be shared*. Even in complex arrangements involving multiple vertically nested governing entities, such as a federal state or the

European Union, *only one* can enjoy sovereignty. Sovereignty can also not be in suspense, in transition or "in limbo". Even in the most complex constellations, it is *always possible and necessary to clearly assign sovereignty* to one level or the other.

3) Sovereignty of the state and within the state

- Sovereignty *of* the state (under public international law) must not be confused with sovereignty *within* the state (as discussed in political theory), which in a democratic state lies with the people.
  - Provisions on sovereignty in constitutions and intern. treaties must be interpreted with caution: To what kind of sovereignty do they refer?

4) The state's underived and independent legal capacity to act

- Due to its sovereignty, the state is by nature endowed with the *legal capacity to act* (power to take measures that are legally valid and binding) in all internal and external affairs.
  - The legal capacity to act does not necessarily mean the right to act in a certain way: It can include the legal power to take measures that are legally valid even if they are unlawful.
- This power is *underived*: not conferred on or delegated to the state by someone else.
- It is also *independent*: Noone can abolish, suspend, limit or control it.
- It includes by nature the power to exercise public authority (public/sovereign power - rule by virtue of higher law) on the state territory. The state is the *only public institution* on the planet, *which exercises underived and independent public power*.
- In external affairs, it includes the power to conclude intern. treaties and accede to intern. organisations, but also to withdraw from them and to reject intern. partners.

5) The state's (quasi-) unlimited legal capacity to act

- Sovereignty endows the state with a comprehensive, (quasi-) unlimited legal capacity to act.
- For centuries, the dogma of the state's completely unlimited sovereignty prevailed (concept of absolute sovereignty).
- Nowadays, *a few basic restrictions* are recognised as *ius cogens* customary international law (concept of relative sovereignty). Measures that overstep these *inherent boundaries*, even provisions in the national constitution, are not covered by the state's legal capacity to act and thus invalid. Serious cases may even trigger a humanitarian intervention. However, apart from these few exceptions, sovereignty remains unlimited.
- Recognised boundaries:
  - prohibition of force against another state or preparations for that
    - no intern. agreements on a joint war of aggression against a third state
    - no constitutional mandates to occupy foreign states, annex foreign territory or reerect an empire
  - prohibition of slavery
    - no laws that introduce slavery or slavery-like exploitation as a legal institution
    - no laws that deny certain people legal personality
  - prohibition of genocide and ethnical cleansing
    - no laws that deprive members of ethnical minorities of all rights
    - no mass expropriations or mass deportations of members of ethnical minorities
  - no other huge-scale extreme human rights violations
    - e.g. no laws that deprive groups of persons (e.g. women in Afghanistan) of their basic rights and freedoms
  - problem: towards a global ius cogens ban on serious climate damage?
    - Does the Paris Agreement of 2015 (ratified by 193 of 197 states) express a global consensus on a general ban on on state activities that cause or favour serious climate damage?
    - Which kinds of climate-damaging activities resp. related laws and policies might be banned in the globalised world?

IV. The far-reaching legal consequences of the sovereignty of the state

1) The state's (quasi-) unlimited public power

- Regardless of globalisation and the resulting de facto dependencies, the state retains a (quasi-) unlimited public power as long as it remains a state.
- The state may not have the right but does have the power to enact laws and take decisions in areas where it has delegated decision-making to international organisations, even if they do not comply with the legally binding decisions of that organisation.
- International institutions cannot acquire the power to declare domestic laws void against the firm express will of the state.
- This even applies in the European Union, even though its law enjoys primacy over the law of its member states. This primacy is only a primacy in application, not in validity, and can be suspended by the individual member state on its territory by a contrary legal act.
  - Such a move may trigger sanctions and, as a last resort, the expulsion of the member state, but in case of an ultimate conflict, the law of the member state will prevail.

2) The state's control over all other public power exercised on its territory

- In the world order of states, *state sovereignty* is *the source of all public power*. No public power can exist that does not flow from a state's act of will. There are governing entities on a lower or higher geographical level who also exercise public power (federated states, regions/provinces, counties/districts/kabupaten, communes, the EU etc.), but the existence of their public power presupposes the state's consent.
- Supranational public power, which is exercised by special intern. institutions on the territory of several states, requires a legal act of every concerned state that generally vests the supranational measures with binding force on the state's territory [innerstaatliche Bindungsanordnung]. This act can be revoked by the state at any time.
- Sub-national public power (on the regional and local level) is regulated in the laws of the state, often with guarantees in the constitution. The state may reorganise this system at any time, if necessary by amending the constitution. It can even eliminate a whole level (e.g. abolish the districts).
  - This also applies to federal states: The existence and public power of the federated states is only guaranteed under the federal constitution. The state can convert into a unitary state and eliminate the federated states by adopting a new national constitution.

3) The state's legal capacity to conclude international treaties in violation of other international law

- The state must not but can conclude treaties, join intern. organisations or forge alliances in violation of other obligations which it has already undertaken. Such steps will be legally valid.
  - Example: An EU member state can join the competing Eurasian Economic Union, although membership in both organisations is incompatible.
  - Example: A NATO member state can conclude a military assistance pact with Russia and even carry out joint military manoeuvres, even though Russia openly threatens NATO.

V. An inseparable political-philosophical consequence: the ultimate responsibility of the state

- Sovereignty comes along with the ultimate *responsibility* of the state towards its citizens *for* the *comprehensive fulfilment of all public functions on its territory*. This includes the final responsibility for the results - or missing results - of the activities of local and regional territorial collectivities and all kinds of international institutions on its territory. If they are not satis-

fying, the state must reorganise the concerned sectors. This may include to associate with other states for more efficient fulfilment of certain tasks.

- If the state delegates tasks to international institutions, it keeps its ultimate responsibility. It must *account for delegating but also for not delegating tasks* and even for not creating stronger international institutions that may perform more efficiently.
  - For example, the ASEAN member states bear the ultimate responsibility for the weak performance of their poorly designed geo-regional organisation ASEAN.
- Likewise, the state must not only account for participating (→ EU member states) but also for not participating (→ UK, Switzerland, Norway, Iceland) in a process of geo-regional integration or for not supporting it more actively.
- Thus, the state's ultimate responsibility can cause it to participate in an *association of states* but also to leave it in order to join or create a better one.
- The state's ultimate responsibility may even prompt a smaller state that is notoriously overwhelmed by the challenges of our time to relinquish its own sovereignty and join a larger, more capable state (→ USA 1788 ff., Germany 1871, Europe in the 2040s?)

VI. Sovereignty and the constitution

- Sovereignty encompasses the *unlimited legal capacity for self-organisation*. The state shapes its institutions and political system at its own discretion. International partners cannot acquire the legal power to impose a certain internal organisation that the state rejects. Their means of influence are limited to conventional political, diplomatic and economic pressure.
- The state's free self-organisation includes the freedom to decide on its own constitution. The *power of the pouvoir constituant remains (quasi-)unlimited*, even in the 21st century under the conditions of globalisation.
  - For example, the state is still free to propagate isolationism and reject international cooperation in its constitution.
- However, the inherent boundaries of sovereignty under today's concept of relative sovereignty (→ supra, III.5) are also boundaries to the capacity to design the constitutional order. The power of the pouvoir constituant cannot extend beyond the legal power of the constituted state.
  - Example: Constitutional clauses that incite to annex foreign territory or perform ethnical cleansing, allow to introduce slavery or deny basic women's rights would be legally invalid under ius cogens customary law.

§ 3 The development from the solitary loner state to international trade, joint markets, multilateral inter- and supranational cooperation, integration and globalisation

I. The old order of solitary loner states

- Most states on this planet regard themselves as *nation states* (states sustained by a nation).
  - A *nation* is a community of people which is, according to historical, ethnic, cultural and/or linguistic criteria, homogeneous in itself and clearly distinguishable from others.
  - The concept of the nation state is based on the *doctrine of the nation*, a powerful political ideology that emerged in Europe and North America in the late 18th century, had a huge impact on the planet in the 19th and 20th centuries, caused two world wars and numerous other wars and still continues to influence political thinking in the 21st century.
- Only a few states are conceived as multi-ethnic states (most prominent example: Soviet Union). Some recognise the internal ethnic-cultural diversity but build a nation on top of it (most prominent example: Indonesia, which strives for "unity in diversity" and uses an artificial national language plus regional languages).
- The classical nation state, as it dominated until the end of World War II, carried out almost all its public functions on its own. It focused solely on its own "nation". It only cared about its own citizens but not about anything that happened beyond the borders of its territory. In the era of nation-states, a *nation-state-centred mindset* prevailed in politics, law, public administration, science, and in the minds of the citizens.
  - Today, in many states far-right populist movements try to revive it.
- Key phenomena of this era include
  - strongly secured borders
  - restrained international mobility
  - little international cooperation, almost no international coordination
    - uncoordinated parallel development of solutions for common problems in several states
  - no transnational (transfrontier inter-regional) cooperation
  - little international help in the event of natural disasters or emergencies

II. The inability of the individual states to meet the challenges of our time

- The decades following World War II saw a triumph of technology and a rapid economic growth in numerous countries that transformed life and civilisation fundamentally. They brought new chances but also new challenges that quickly overwhelmed the capabilities of individual states. This process is still going on and even accelerating.
- Challenges that the individual state is inable to meet:
  - transnational crime (esp. transnational economic crime, drug and arms trafficking, later also cybercrime)
  - international terrorism
  - globally organised tax evasion
  - undue influence of powerful global enterprises
  - transnational pollution
  - man-made climate change
  - global spread of invasive species (who may also bring new diseases)
  - pandemics (→ bird flu, Covid-19)
  - recently: new threats to democracy in the era of digitalisation
- Today, an increasing globalisation and geo-regionalisation of challenges is evident. The individual state, in particular the classical nation-state, is increasingly out of its depth in a growing number of areas.

- Technical progress in most high-tech areas even requires a global market to fund it.
  - If we still lived in the limited world of the solitary loner state, many innovative products that we take for granted, from smartphones and mRNA vaccines to AI, would not exist.
- An overdue debate: Can states with less than 300 to 400 million inhabitants still be effective and resilient today?

III. The states exploring new ways under the rule of public international law

- see **Diagram 1**

1) States seeking alternatives to merging into a larger, more capable state

- A practical solution to ensure that the state can meet the challenges of our time would be to merge several small states into a larger, more capable state.
  - This has happened in North America 1788 (when the USA transformed from a confederation into a federal state) and in Germany 1871 (when the German states formed the German Empire). It may happen again one day in Europe (maybe in the 2040s?).
  - To allow this solution whilst maintaining maximum independence of the uniting states, the Americans JAMES MADISON, ALEXANDER HAMILTON and JOHN JAY invented in their "Federalist Papers" (1787/88) a new form of organisation: the *federal state*.
    - The federal state is the closest possible association of states (a state itself), but grants the federated states a special constitutional status (originary public power under the federal constitution, constitutional autonomy, autonomous self-organisation, guaranteed competences and basic finances etc.).
- However, in the history of the world order of states, this solution has not become popular, since *in the federal state only the federation enjoys the status of a sovereign state* in the sense of public international law, while the federated states are merely "states" in the sense of state law (non-sovereign "states" with an elevated constit. status). Merging into a unification state inevitably implies to give up the merging state's sovereignty. Until today, the states, esp. nation-states, are not prepared for that but prefer to seek alternatives:

2) Direct cooperation through international treaties

- Soon after World War II, intern. cooperation intensified - through informal consultation (a first step), intergovernmental conferences (not very effective) and, more and more, international treaties.
- International treaties are a *legally binding* instrument. They are regulated in detail in the *Vienna Convention on the Law of Treaties* of 1969.
  - International treaties are registered under art. 102 UN Charter at the United Nations Secretariat and published in the United Nations Treaty Collection (UNTC). In September 2026, its print version, the United Nations Treaty Series, comprised 3.444 volumes.
- Besides the classical *bilateral treaties*, a growing number of *multilateral treaties* was concluded. This allowed for a wider geographical range of the cooperation and greater equality among the partners.
  - In September 2026, the United Nations Treaty Collection (UNTC) comprised 704 multilateral treaties.
  - Today, the USA (under Donald Trump), Russia (under Vladimir Putin) and China (under Xi Jinping) prefer again the old practice of bilateral agreements, because it enables them to act more as hegemonic powers.
- However, intern. treaties *need to be implemented* at the domestic level, in order to take full effect. If this does not happen, they are useless. This renders this instrument cumbersome, effortful and prone to failure.

3) International cooperation in conventional international organisations

(intergovernmental organisations)

- The decades after World War II also saw a *boom of international organisations*.
- Definition: International organisations are associations of states (with own legal personality) established by an international treaty for the joint pursuit of specific objectives; they

are designed to be permanent, operate on the basis of equality of states, have at least one *common organ*, and are thereby capable of forming and expressing a *will of their own*. In the advanced versions, member states are obliged unter the founding treaty to accept the organisation's decisions as binding and implement them within their domestic legal order.

- This ensures a certain degree of coherence and coordination in the performance of public tasks, but generally does not restrict the states's ability to act internally.
  - Unless the national constitution provides otherwise, *domestic laws and measures that contravene the organisation's decisions* are *neither void nor inapplicable*.
  - The organisation's decisions have *no domestic effect as long as the domestic legal act to implement them is lacking*.
- This cumbersome and unreliable approach is not very effective for tasks that require a guaranteed swift, uniform and effective course of action of the states. Nevertheless, today it is the most common approach of the states to meet the challenges of our time.
  - In 2026, there is an estimated number of 300 to 500 intergovernmental organisations, including 15 specialised agencies of the United Nations.

4) Supranational cooperation in supranational organisations

- The search for new approaches also led to the creation of supranational institutions, i.e. bodies and organisations under public international law that are entrusted with the performance of special tasks through the *exercise of supranational public power*, especially supranational regulative power, on the territory of the participating states. The states "transfer" sovereign rights to the supranational institutions, enabling them to exercise public power directly over the citizens and public authorities in all states without assistance from domestic authorities - no implementing domestic legal act is necessary.
  - Most important examples: the *European Communities* (European Coal and Steel Community [1951], European Economic Community [1957] and European Atomic Energy Community [1957], which later formed the European Union. Other examples: *Eurocontrol* (a European flight control organisation, 1960), *European Patent Organisation* (1973). Predecessors were *river commissions*, who regulated already in the 19th century the ship traffic on the European rivers Rhine and Danube.
- The mission of supranational organisations is limited to narrowly defined special tasks. However, the supranational measures can achieve a *high degree of effectiveness*, since they are *exactly the same* and apply from exactly the same time *everywhere* on the territory of all states, without the delays or distortions brought by a national implementing act. They combine the advantages of direct sovereign intervention with those of an expanded territorial scope of action. However, as this effectively limits the influence of the individual state on its own territory, this solution has not become popular outside Europe.

5) Geo-regional integration in a non-state but state-like supranational union/ "Staatenverbund"

a) The European Union as first representative of a new form of organisation

- In the 1980s, the European Communities, later European Union, evolved into the *first* and, to date, only *representative of a new form of organisation* under public intern. law that extends far beyond a specialised supranational organisation: a geo-regional general *organisation of integration* that unites its member states into a new, comprehensive political community and exhibits the characteristics of both, a *supranational organisation and* a *confederation*, while transcending both, yet without crossing the threshold into statehood.
  - Unlike the federal state model, this new form of organisation was *not invented but emerged*, as a result of numerous developments, reforms and compromises, in the process of European integration.

- The main features that distinguish the European Union from any other organisation under public international law, are:
  - a sophisticated institutional system with federal and unitarian elements
  - far-reaching competences
  - comprehensive exercise of supranational public power in numerous areas
  - a highly developed legal system with a powerful court of justice
  - a legal framework for a geo-regional internal market
  - an own currency
  - an own citizenship

b) The debate on the European Union's legal nature: "compound of states" ["Staatenverbund"], "compound of states and constitutions" or supranational union?

- There has been for decades a lively debate about the legal nature of the European organisation of integration.
- The most important approaches are:
  - aa) the state-centred "Staatenverbund" doctrine of the German Federal Constitutional Court
    - Maastricht judgement of 1993 (BVerfGE 89, 155); Lisbon judgement of 2009 (BVerfGE 123, 267)
    - an approach welcomed but also criticised by constitutional courts of other EU member states
    - an approach that overemphasises the importance of the states and neglects the independent role of the European organisation of integration
    - strange: the use of an untranslatable German term to describe a European phenomenon...
  - bb) the "unconventional" approach of some scholars: Union, states, Treaties and constitutions as a constitutional unity
    - an approach that combines heterogeneous elements that do not go together (like "fish & bicycle"...)
  - cc) the union-centered approach of a general theory of the supranational union
    - ARMIN VON BOGDDANY (1993 ff.), THOMAS SCHMITZ (2001)
    - an approach that focuses on the European organisation of integration itself, its independent role and significance

c) The supranational union as a dynamic non-state but state-like organisation of supranational geo-regional integration

- The supranational union is a new, non-state but state-like form of organisation, situated *in the triangle between supran. organisation, confederation and federal state*.
- It has emerged as a special form of organisation for a process-oriented supranational geo-regional integration, which may one day (though not necessarily) lead to the formation of a geo-regional federal state.
- This form of organisation could also serve geo-regional integration in other regions of the planet, yet since it comes with a loss of influence of the individual state (and its government), interest in the Global South has been low.

6) Transnational cooperation

- In the wake of international and supranational cooperation, also transnational cooperation (transfrontier inter-regional cooperation between neighbouring regional and local territorial collectivities) has developed.
  - It developed in particular in *cross-border regions* that form contiguous settlement areas with strong economic and social connections, a common cultural background, shared natural environments without natural boundaries or historically developed relationships.
  - Prominent examples: Meuse-Rhine Euroregion (Aachen - Liège - Maastricht), Greater Region Sar-Lor-Lux (Saarland - Lorraine - Luxembourg)
  - In some cross-border regions there is even cross-border local public transport. In some it is not always clear which state you are in when you travel.
  - Note that transnational cooperation is always "international" but can be nonetheless very provincial!

- In the early days, transnational cooperation was often informal (and probably not always totally legal under national administrative law), but nowadays it is provided for in international treaties.
  - See, for example, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 1980.

7) Development of a global international economic system

- (→ see Part 1 of the course)

IV. The intensification of global trade and international cooperation into a phenomenon of globalisation

- International cooperation (→ III.2-4) and global trade (→ Part 1 of the course) have intensified
  - both in terms of quantity and quality
  - in a long historical process, first slowly, with interruptions, than rapidly (after 1989)
  - supported by a certain rise of the rule of law in many countries and in international relations

  into a new phenomenon that finally has changed the economy, the society and the lives of many people almost everywhere on the planet: globalisation.

1) Definition of globalisation

- Note that there is no universal scientific definition of globalisation
  - the presented definitions depend on the scientific discipline, the subject of the research and the perspective adopted
- Proposed definition for the purpose of this course:
  Globalisation is the historical *process of increasing worldwide interconnectedness, interdependence and intensification of relationships* among economic actors, individuals, societies, institutions and states in a growing number of fields, particularly in economics, politics, science, culture, environment and communication.
  - As a result of this process, geographical distances lose their significance (space-time compression) and events in one part of the world can have tangible effects on distant regions of the planet.

2) Early stages respectively precursors of globalisation

- Various chronological classifications of globalisation and its precursors are discussed. The following is based on the smart classification by PETER VANHAM at the World Economic Forum 2019:
- trade on the silk road (1st century BC to 5th century AD, 13th to 14th centuries)
  - trade of silk via overland routes, from China to Rome
- trade of spices through the islamic world (7th to 15th centuries)
  - primarily by sea
- Age of discovery (15th to 18th centuries)
  - discovery of America
  - trade of luxury goods (esp. spices) by the sea
  - early imperialism
- Globalisation 1.0 (19th century to 1914)
  - enabled by the 1st Industrial Revolution (1780 to mid-19th century)
  - trade of textiles and industrial goods
  - for a long time dominance of the United Kingdom
- Globalisation 2.0 (1945 - 1989)
  - enabled by the 2nd Industrial Revolution (1870 - 1910s)
  - rise of major exporting nations (US, Germany, Japan, trade within Soviet Union)

3) The general, broad and rapid advance of globalisation since the end of the Cold War

- See again the classification by PETER VANHAM at the World Economic Forum 2019:
- Globalisation 3.0 (1989 - 2010s)
  - enabled by 3rd Industrial Revolution (1960s to 1990s)
  - rise of global supply chains
  - dominance of USA, EU, Japan, rise of China
- Globalisation 4.0 (since late 2010s)
  - enabled by 4th Industrial Revolution (2000s to 2010s)
  - dominance of USA challenged by China
  - "negative globalization" expands too, through global climate change

V. Globalisation and geo-regionalisation

- Definition: Geo-regionalisation is a process similar to globalisation, or even more intense, that is confined to a group of neighbouring states, often sharing a common cultural or civilisational background, within a contiguous region of the world.
- Unlike globalisation in its current form, geo-regionalisation *can also* involve the *integration* in an *organisation of integration* that is not, from the outset, limited to a few specific tasks, but orientated towards a common future of the participating states and their citizens.

1) The advanced process of geo-regionalisation in Europe

- dominated by the European Union as a European supranational union (→ § 3 III.5) and the connected European Economic Area and Schengen Area, but also the Council of Europe

2) The process of geo-regionalisation in other parts of the world

- predominantly economic cooperation, but also cooperation in other areas
- prominent examples:
  - Eurasian Economic Union (EEU)
    - Russia, Belarus, Kazakhstan
    - conceived as an Eurasian organisation of integration
  - Mercado Común del Sur (Mercosur)
    - Argentinia, Bolivia, Brazil, Paraguay, Urugay, Venezuela; 7 associated states
  - Economic Community of West African States (ECOWAS)
    - Benin, Cabo Verde, Côte d'Ivoire, Ghana, Guinea, Guinea Bissau, Liberia, Nigeria, Senegal, Sierra Leone, Gambia, Togo
    - economic and political cooperation, peacekeeping
    - a West African organisation of integration
  - Common Market for Eastern and Southern Africa (COMESA)
    - 21 Eastern and Southern African states
  - Association of Southeast Asian Nations (ASEAN)
    - Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor Leste, Vietnam
    - economic and political cooperation
    - strongly intergovernmental
    - a (weak) Southeast Asian organisation of integration
  - African Union (AU)
    - 55 African States
    - economic cooperation (own free trade area), political cooperation, peacekeeping, human rights protection
  - Organization of American States (OAS)
    - 35 American states

3) Globalisation and geo-regionalisation as complementing, not competing phenomena

- Both can sometimes solve problems that cannot be solved at the other level.
- Whilst in many parts of the world, integration is possible at the geo-regional level, due to shared values and a common cultural and civilisational background, the idea of a global integration of humankind remains, for the time being, utopian.

VI. The world order of states in the 21st century: cooperative, open and integrated statehood, global trade and a plurality of legal forms of cooperation and associations of states in a globalised world

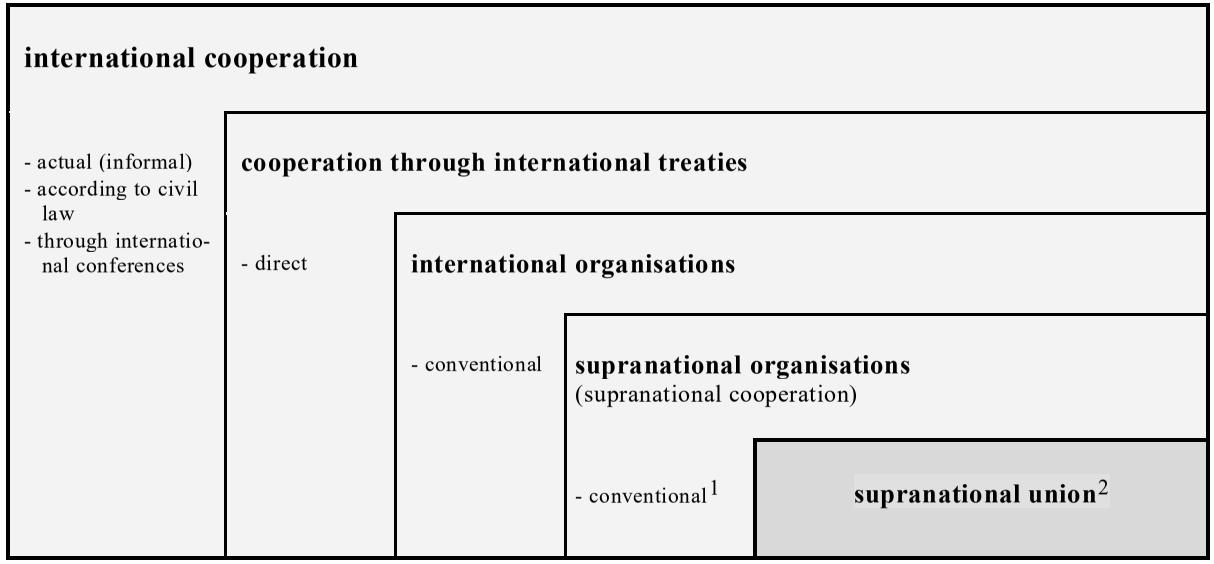
- The world has changed significantly since the old time of the solitary loner states:
- *Cooperative statehood:* States no longer attempt to handle all tasks on their own, but instead cooperate with other states and international institutions.
- *Comprehensive global trade:* States no longer attempt to produce all essential goods themselves but rely on an international division of labour and trade accross the globe.
  - Domestic industries rely on *complex global supply chains* that can even include just-in-time production in other continents.
- *Open statehood* [offene Staatlichkeit]: States delegate sovereign powers to supranational and transnational institutions, open up to the exercise of supranational and transnational public power on their territory and even join systems of mutual collective security (UN, NATO etc.).
- *Integrated statehood* [integrierte Staatlichkeit]: States participate in processes of comprehensive supranational geo-regional integration with common policies, an internal market, free movement etc.
  - At present only in Europe but in the future possibly also in Africa, Latin America, Southeast Asia.

- How does this actual reality fit into the state's sovereignty under public international law in the world order of states?

concerning § 3 III The states exploring new ways under the rule of public international law

Diagram 1

Forms of international cooperation, supranational cooperation and integration



= *form of organisation implying integration*

↓ (is always) ↑ (can be)

confederation

(e.g. Switzerland before 1848, USA before 1787/88, German Confederation)

state			
federal state		**unitary state**	
federal state with strong federated states (e.g. Switzerland)	**unitary federal state** (e.g. Austria)	**strongly decentralised unitary state** (e.g. Spain)	**centralist unitary state** (e.g. GB, DK)

1 E.g. the European Communities at the beginning, river commissions.

2 Until now only the European Union; other proposed classifications: "Staatenverbund" ("compound of states"), "Staaten- und Verfassungsverbund", state without sovereignty.

§ 4 The facets of globalisation

- Globalisation began with global trade, but is not limited to the economy. Particularly in recent decades, it has spread to various areas of civilisation and society.
  - For better and worse: Globalisation has also manifested itself in two world wars, the threat of a Third World War that loomed for decades, the extinction of most wildlife on the planet and a global deterioration in the planet's climate.

I. Economic globalisation (including financial globalisation)

- see **Part 1** of the course

1) Phenomenon and significance

- the first and most extensively studied form of globalisation
- the *backbone of globalisation*
- started with global trade, extended to global financing (investment) and global services (esp. digital services) and nowadays dominates large parts of the economy
- a sensitive phenomenon: production in *complex global supply chains*
  - products are assembled in one country from parts partly produced in various other countries and based on research performed in yet another country
  - can make globalisation legally complicated
  - causes a high degree of mutual dependency

2) Legal framework

- a broad variety of *international treaties*:

a) WTO Agreements

- the treaties on which the World Trade Organisation is based
- Marrakesh Agreement Establishing the World Trade Organization
- agreements contained in the annexes to the Marrakesh Agreement, especially
  - the General Agreement on Tariffs and Trade (GATT 1994)
  - the General Agreement on Trade in Services (GATS)
  - the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

b) Bilateral free trade agreements (FTA)

- the classical and still common way

c) Regional trade agreements (RTA)

- multilateral agreements on free trade or more for a part of the planet
- prominent examples:
  - Regional Comprehensive Economic Partnership (RCEP)
    - East Asia, Southeast Asia (also Indonesia), Australia
  - Mercado Común del Sur (Mercosur)
    - South America
  - new: EU-Mercusur Partnership Agreement (EMPA)
    - EU and Mercusur; not yet in force
  - United States-Mexico-Canada Agreement (USMCA)
    - North America; has replaced NAFTA
  - Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
    - Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, UK
    - Indonesia is preparing to join in 2027
  - African Continental Free Trade Area (AfCFTA)
    - 46 African states; run by the African Union
    - currently in crisis

d) Customs union agreements

- abolition of internal custom duties and set of a common external customs tariff
- common in America and Africa; an element of the European internal market

e) Comprehensive economic partnership agreements

- going further, covering also services, investments and cooperation between states
- prominent example: the Indonesien-European Comprehensive Economic Partnership Agreement (IEU-CEPA) (→ Part 3 of the course, § 9)

f) Treaties on geo-regional integration

- in Europe (EU Treaties), Eurasia (EEU Treaty), West Africa (ECOWAS Treaty), Southeast Asia (ASEAN Charter)

g) Investment protection agreements

- usually providing for an investor-to-state dispute settlement mechanism

h) United Nations Conventions on special aspects

- prepared by the UN Commission on International Trade Law (UNCITRAL)
- prominent examples:
  - *UN Convention on Contracts for the International Sale of Goods (CISG)*
    - often replaces national sales law based on an individual agreement
  - UN Convention on the Limitation Period in the International Sale of Goods
  - UN Convention on the Use of Electronic Communications in International Contracts
  - UN Convention on Transparency in Treaty-based Investor-State Arbitration
- complemented by UNCITRAL model laws (inspiring national business legislation)
  - e.g. on International Commercial Arbitration, e-commerce, cross-border insolvency, commercial mediation

3) Main institutions

- World Trade Organisation (WTO)
- United Nations
  - General Assembly, Economic & Social Council and some subsidary institutions (UNCITRAL, UNCTAD)
- specialised agencies within the United Nations System
  - independent international organisations affiliated with the UN through relationship agreements
  - World Bank Group and International Monetary Fund (for international financing of states)
  - UNIDO, UN Tourism, FAO, WIPO, ILO
- Organisation for Economic Co-operation and Development (OECD)
- geo-regional organisations for economic cooperation

II. Technological globalisation (including digital globalisation)

1) Phenomenon and significance

- the rise of advanced technical products developed at great expense for a global market
  - cars, airplanes, sophisticated machines, vaccines, medicines etc.
  - high development costs can only be recouped through worldwide sales on a global market
- in particular: the rise of high-tech IT products developed for a global market
  - the constant, rapid advancement of smartphones, tablets, PC, laptops etc.
  - the development of highly complex IT operation systems and software packages
  - without a global market such rapid progress would not be possible

2) Regulative framework

- the rise of *uniform global standards* for technical products
  - e.g. for cars and airplanes, guaranteeing safety and allowing to sell them everywhere
- in particular: the rise of uniform global IT standards
  - standardisation is necessary to ensure connectivity and compatibility of IT equipment and software
  - technical standards for interfaces, protocols, wireless communication, even chargers
  - prominent examples: USB, Bluetooth, Wifi, Quick Charge

- the *regulative chaos of* uncoordinated *regulations of public and private institutions*
  - of international governmental organisations
    - e.g. the International Civil Aviation Organization (ICAO)
    - e.g. the World Forum for Harmonization of Vehicle Regulations (WP.29), a working party of the United Nations Economic Commission for Europe (UNECE)
  - of international non-governmental organisations
    - e.g. the International Organisation for Standardization (ISO), an association under Swiss law
  - of private professional organisations
    - e.g. the Institute of Electrical and Electronics Engineers (IEEE), a world-wide professional association of engineers who defines the Wifi standards
  - regulations of private consortiums
    - e.g. the USB Implementers Forum, Inc., a non-profit corporation of the companies that developed USB
- the *missing global international treaty on digitalisation*
  - software companies encroach excessively on the privacy of their users
  - social media and internet platforms have become a serious threat to democracy (hate speech, cyberbullying, organised disinformation, manipulation of public debates etc.)
  - immature use of AI risks to destabilise states, companies, technical systems and society
  - individual states are hardly in a position to enforce own regulations on digitalisation
  - however, there is no global intern. treaty - not even in preparation - to set binding global standards for digital life

III. Cultural and socio-cultural globalisation

- the emergence of global cultural and socio-cultural trends
  - e.g. global trends in pop music and entertainment
  - e.g. global sporting trends
  - e.g. global gastronomy and consumption trends (rise of fast food, certain international food, coffee shops etc.)
- trends towards a limited gradual convergence of customs and behavioral patterns
  - e.g. of behaviours in business and professional life (e.g. greater punctuality and reliability)
  - e.g. of communication habits (use of social media and video conferences, prioritising of short messages, emoji etc.)
  - e.g. of leisure activities
  - e.g. gradual changes in social attitudes regarding family life, sexuality, diversity and body awareness
- superficial and profound changes in culture and society caused by the increasing...
  - development and modernisation (a result of economic & technological globalisation)
  - international *mobility* (in business life, academic life, tourism)
  - intercultural professional collaboration (offline and online)
  - *professional exchange* (visiting lecturers, guest experts, immigrated workers)
  - *cultural exchange* (pop music, movies, streaming services, social media etc.)
  - intercultural personal relations (friendships, marriages, mixed families etc.)
- this is a *societal process* - not regulated or controlled by any international law or institution
  - however, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005 aims to preserve the *cultural diversity and richness* of the planet *as a universal value* also in times of globalisation

IV. Global crime and terrorism prevention

- international cooperation between police authorities, secret services, public prosecuters, courts and, on occasion, the military
  - started already in the 1970s
- a response to the *globalisation of terrorism*
  - which began in the 1970s with the successful cooperation between Arabian and European terrorist groups
  - which reached its latest peak with the globalised, internet-supported Islamist terrorism of the Islamic State and its allies
- also a response to the *globalisation of organised crime*
  - globally operating drug cartels, arms traffickers, classical mafia organisations and financial crime networks
- 19 global international treaties and protocols serve to prevent terrorist acts
  - each addresses a specific area or aspect, such as civil aviation, maritime navigation, protection of "international protected persons", prevention of hostage-taking, bombing, nuclear terrorism, financing of terrorism
  - states are obliged either to prosecute offenders themselves or to extradite them
  - moreover, a (non-binding) United Nations Global Counter-Terrorism Strategy of 2006 (General Assembly Resolution A/RES/60/288) includes a detailed Plan of Action that outlines numerous measures

- several global international treaties and protocols serve to fight organised crime:
  - the United Nations Convention against Transnational Organized Crime (UNTOC) of 2000
    - with special protocols on human trafficking, migrant smuggling and illegal firearms manufacturing & trafficking
  - three international drug control conventions
    - Single Convention on Narcotic Drugs of 1961, Convention on Psychotropic Substances of 1971 and UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988
  - the United Nations Convention against Corruption (UNCAC) of 2003
  - new: the United Nations Convention against Cybercrime (UNCC) of 2024 (not yet in force)
- police authorities also cooperate via the Intern. Criminal Police Organization (INTERPOL)
  - an association of national police authorities that is now recognised as an intern. organisation

V. Global climate and environmental protection

- intensive global cooperation, complemented by even more intensive geo-regional cooperation, for effective environmental and climate protection
  - increases steadily, as environmental problems that individual states can no longer tackle on their own are becoming increasingly pressing
- a high number of international treaties has turned environmental law into a *complex multi-level system* of global and geo-regional international law, national law and EU law
- important international treaties on environmental protection (selection):
  - Vienna Convention for the Protection of the Ozone Layer of 1984
  - Basel Convention on the Control of Transboundary Movements of Hazardous Wastes of 1989
  - Stockholm Convention on Persistent Organic Pollutants of 2001
  - Convention on Biological Diversity (CBD) of 1992
  - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1973
  - United Nations Convention to Combat Desertification (UNCCD) of 1994 -
  - Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 1998
  - Convention on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD) of 1989
  - see also the many geo-regional environmental agreements
  - since 2022 in preparation (so far without success): a global plastics treaty
- international treaties on climate protection:
  - United Nations Framework Convention on Climate Change (UNFCCC) of 1992
    - with Kyoto Protocol of 1997 and Doha Amendment to the Kyoto Protocol of 2012
  - Paris Agreement (on climate change) of 2015
- important international institutions:
  - UNFCCC and Paris Agreement treaty bodies (COP, UNFCCC Secretariat, IPCC)
  - treaty bodies under other environmental treaties
  - United Nations Environment Programme (UNEP), a subsidiary institution of the General Assembly
  - Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), an autonomous inter-governmental institution
  - International Union for Conservation of Nature (IUCN), a "quasi-international" organisation of both, government and civil society organisations
- perspective: towards *shared global responsibilities* of the states?

VI. Global regulations for the use of the seas

- international cooperation to ensure that the high seas, which do not fall under the sovereignty of individual states, are not left in a legal vacuum
- comprehensive regulation of the use of the seas in the *United Nations Convention on the Law of the Seas (UNCLOS)* of 1982
- international treaties on marine environment protection
  - Art. 192 et seq. UNCLOS
  - new: Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) of 2023 (comprehensive; in force since 2026)
  - Convention on Biological Diversity of 1992

- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (in the form of the London Protocol of 1996)
- International Convention for the Prevention of Pollution from Ships (MARPOL) of 1973
- see also the numerous geo-regional treaties and treaties on deep-sea fishery

VII. Towards a "globalisation of law"?

- see **special material** (handout/article) from a conference in Semarang in 2020
- definition: a globalisation of law would be a *profound transformation or replacement of domestic law* by norms and standards of global public international law
- a topic discussed for two decades during more optimistic times
  - a heterogeneous, sometimes blurred discussion, often rather from a political/social science than legal science perspective
  - a discussion which, through its choice of terminology, clearly refers to a historical precedent:

1) A historical precedent: the Europeanisation of law

a) The European basic concept of integration through law

- integration based on law and respect for law
- strong emphasis on the rule of law
  - a European common fundamental value (cf. art. 2 EU Treaty)
- demanding requirements for the implementation of EU law in the member states
  - but no cocercive powers of the Union to enforce its law
- a powerful own court of justice, to "ensure ... that the law is observed" (art. 19 EU Treaty)
  - a court with a strong focus on the effectiveness ("effet utile") of Union law

b) Special characteristic features of European Union law

- the *autonomy* of Union law
- the *direct effect* of Union law in the member states
- the *unity* of Union law in all member states
- the *primacy* of Union law over national law
  - even over national constitutional law

c) The consequence: a profound transformation of member states' law by the demanding European standards

- Europeanisation of economic law
- Europeanisation of administrative law
  - concerns legal interpretation, the implementation and enforcement of law, recovery of unlawful state aids, legal protection, interim relief, state liability for unlawful acts, and more
- Europeanisation of constitutional law
  - through constitutional amendments needed to join the EU or to participate in new integration steps
  - through the influence of the jurisprudence of the European Court of Human Rights on the interpretation of fundamental rights and rule of law principles in the national constitutions
- Europeanisation of other fields of law
  - agricultural law, environmental and climate protection law, data protection law, asylum and refugee law, public procurement law, consumer protection law, international private law etc.

2) The perspective: Can something like this happen at the global level?

- lessons learnt from the Europeanisation of law: no globalisation of law without...
  - a reliable commitment to the rule of law
  - demanding standards for domestic implementation and enforcement of the global law
  - sophisticated conceptional precautions to ensure compliance with the global law
  - protection of the global law by global courts of justice
- Discussion: How likely is it this to happen in the coming decades, and in which areas?

§ 5 Outlook: the prospects of globalisation

I. The threat to globalisation posed by the rise of nationalist populism and global "bullies"

- the threat to globalisation posed by the rise of anti-globalist nationalist populists in the West
  - USA, Germany, France, Netherlands, Hungary, Slovakia, Argentina etc.
  - an anti-globalism based on propaganda & lies but nevertheless successful in parts of the society that are receptive to it
- the threat to globalisation posed by the rise of global "bullies"
  - the efforts of the USA, Russia and China to control or manipulate globalisation in the national interest (e.g. by politically targeted import and export restrictions)
  - the efforts of the USA, Russia and China to replace the rule based, multilateral intern. order with a tripolar, hegemonic world order with bilateral vassal relationships (→ Part 3, § 7)
    - the attempts of Russia (under VLADIMIR PUTIN) to violently restore the Soviet empire (war of aggression against Ukraine, hybrid war against European states, threats against former Soviet republics etc.)
    - the assaults of the USA (under President DONALD TRUMP) on public international law (illegal tariffs, kidnapping of the President of Venezuela, threats against Canada and Greenland, war of aggression against Iran etc.)
    - threats and encroachments of China (under President XI JIPING) against Taiwan, the Philippines, Vietnam, Malaysia
  - the assault of Iran and Yemen's Houthis against the freedom of the seas in the Strait of Hormuz and the Bab al-Mandab Strait (with severe consequences on global trade)

II. The need to reorganise globalisation in order to stabilise it

1) The need for a comprehensive reform of international economic law

- see **Part 1** of the course
- in particular: the need to reform the World Trade Organisation
  - the need to overcome consensus-based decision making, esp. for adopting new agreements
  - the need to restore the functioning of the Appellate Body, which has been blocked by the USA since 2019
  - the need to reform the criteria for the privileged status of "developing country" (which presently still applies to China)
- in particular: the need to reform investor-to-state dispute settlement mechanisms
  - to ensure that states keep the means for effective environment, climate and public health protection
  - the need to establish a Multilateral Investment Court (MIC)
- in particular: the need to reform international tax law
  - to ensure that major global economic players pay their fair share of tax

2) The need for global minimum regulation for digital products and services, including AI

- see above, **§ 4 II.2** (slide 4)
- since in the globalised world, individual states are hardly in a position anymore to enforce appropriate own regulations on digitalisation
- the need for global minimum standards for the *protection of privacy* in the digital world
- the need for global minimum rules *against* the *abuse of a dominant position* on the market by software companies, social media providers and AI providers
- the need for global minimum rules on the obligation of platforms to take *effective precautions* against hate speech, cyberbullying, fake news and disinformation campaigns
- the need to establish *strict liability* (liability without fault) of social media providers for any illegal or encroaching content on their platforms (with recourse against the responsible user)

3) The need for a sound legal framework for international aid and cooperation in the event of pandemics, natural disasters and catastrophic consequences of climate change

- unlike in the era of the solitary loner state, nowadays states provide generous support to each other, even globally, in the event of natural disasters and pandemics
- so far, help from states outside the own geo-region is largely the result of spontaneous political coordination; a sound global legal framework is still missing
- in 2024, the UN General Assembly decided to *prepare a Treaty on the Protection of Persons in the Event of Disasters (PPED Treaty)* until 2027
  - the Treaty shall be based on draft articles presented by the International Law Commission in 2016
  - it could also regulate aid and cooperation in case of disasters caused by climate change
- in 2025, the World Health Organization has adopted a *WHO Pandemic Agreement* to strengthen global collaboration in pandemic prevention, preparedness, and response
  - which will be open for signature and ratification after the completion of an important annex

4) The need for strong multilateral institutions and confidence-inspiring, effective and reliable dispute resolution and enforcement mechanisms in the law on globalisation

- under the prevailing international treaties, the institutions mostly play a cordinating rather than politically decisive role, with decisions made by consensus
- the prevailing treaties mostly provide for weak dispute resolution mechanisms without international courts, and there are no effective enforcement mechanisms

III. The need to reorganise globalisation to ensure a fairer distribution of benefits

- globalisation must benefit all parts of society, not only a small circle of elites, businesses and professionals
- where this is not the case but a fairer approach is possible without disruption, globalisation should be *reorganised* appropriately by international and national regulation
  - e.g. regulations that favour small local cooperatives of palm oil farmers over large agribusinesses
  - to develop appropriate concepts may require intensive scientific research, interdisciplinary collaboration and a broad international public debate, involving not only economic stakeholders but also the civil society
- where this is not possible, *social justice* may need to be ensured *by compensatory measures* in favour of those who lose out in globalisation or do not benefit from it
  - if this is neglected, these parts of society may turn into anti-globalists in the long term

IV. The need to ensure effective human rights protection in the context of globalisation

1) The need to insist on full respect and enforcement of human rights as a legal precondition for accepting a state as a partner in international trade and economic cooperation

- see for more details **special material** on human rights in international economic relations from the course Human Rights and Globalization
- the globalised world recognises *human rights* as *universal values of mankind*
  - historical challenges such as historical and cultural relativism and the "Asian values" doctrine have faded away
- nevertheless, there will always be a risk of serious disregard for h.r. in individual states.
- globalisation has strengthened h.r. rights in multiple ways
  - via development, better funded public institutions, cross-cultural dialogue & exchange of experiences and the need for states who depend on the global market to maintain a good intern. reputation

- but it has also brought new h.r. problems
  - an international race to the bottom with regard to labour standards
  - extreme forms of exploitation (child labour, human trafficking, workers kept in slavery-like conditions)
  - violations of the rights of indigeneous peoples
- to live up to the universal values, international partners must make full realisation of h.r. a prerequisite for accepting a state as a partner; there are several options:
  - to require ratification of the core global h.r. treaties before concluding a trade agreement
  - to include an *"essential elements" clause on h.r.* in a trade agreement (an instrument used by the EU)
  - to suspend membership of states with systematic h.r. violations in intern. financial transaction systems such as SWIFT
  - to suspend travel connections to places with systematic h.r. violations (kills tourism)
  - to oblige domestic enterprises in due diligence laws to screen their intern. supply chain for h.r. violations
- the problem of the *human rights blindness of the World Trade Organization*
  - a traditional lopsided focus on trade liberalisation that disregards its impact on labour standards and h.r.
  - the need to to *add a labour rights and human rights clause* to the WTO agreements

2) The need to regulate and enforce the responsibility of businesses in the field of human rights

- see for more details **special material** on human rights, business & development in the globalised world from the course Law and Development
- h.r. do not bind private actors directly but only have an indirect horizontal effect (via criminal law, private law, labour law & admin. law)
- internationally operating *enterprises have a political & ethical responsibility* in the field of h.r., since their activities can have a strong impact on them
  - they must not only refrain from violating h.r. themselves but also ensure that no h.r. violations by others occur in the manufacturing processes in their supply chain
- the present approaches to implement this responsibility are unsatisfying
  - mainly raising awareness and self-commitment (also binding agreements with foreign social partners)
  - UNHRC resolution *"Guiding Principles on Business and Human Rights* of 2011 (not legally binding)
  - *human rights due diligence laws* in some states oblige bigger domestic enterprises to screen their foreign suppliers and document it, but these laws and their approaches are very heterogeneous
- the *need for a global international treaty on business and human rights*
  - which defines global standards for all internationally operating enterprises from all and in all states
  - a UNHRC working group is preparing it since 2015 (with third revised draft from 2021), but political consensus has not yet been reached

V. The need to support globalisation losers to adapt to the realities of the globalised world

- a largely ignored problem: *globalisation produces not only winners but also losers*
  - people who lose their job or business or must adapt to less favourable conditions because of the foreign competition, or experience a serious decline of their home region
  - this happens in all countries from which industry relocates to countries with lower production costs
- globalisation losers must be offered a perspective, to prevent them from supporting radical political movements
  - many supporters of far-right populist movements (e.g. of Donald Trump's MAGA movement) have lost out or are afraid to loose out from globalisation and are no longer willing to recognise its benefits
- to avoid serious disruption, globalisation should be flanked by *professional development and retraining measures* to support those who have lost out to find a new career or businesss path
  - this could be financed by a (small) national or international *globalisation tax*

VI. The prospects for globalisation under such a legal framework

- DISCUSSION: towards a golden age (instead of decline) of globalisation?