

§ 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-Mercosur Partnership Agreement (EMPA)
 - EU and Mercosur; 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 Indonesian-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 subsidiary 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 prosecutors, 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 coercive 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?